



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 16, 2019

Paris Penny
Social Services Commission
Sent via email only to: Paris.Penny@dhhs.nc.gov

Re: Objection to All Rules Submitted in 10A NCAC 06S and 06T

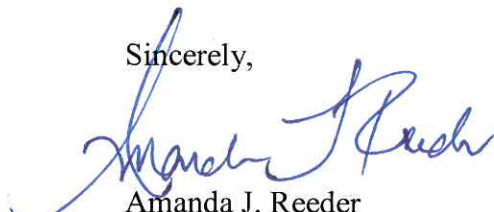
Dear Ms. Penny:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to these Rules for lack of statutory authority. Specifically, the Commission found that as submitted, the agency did not cite to any authority to regulate adult day health services, and that is the subject matter addressed by these Rules.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Misty Piekaar-McWilliams, DHHS

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RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: All Rules in Subchapters 06S and 06T

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

These Rules are readoptions of rules that establish requirements for adult day health services. As authority for these Rules, the agency cites to G.S. 143B-153 and 131D-6. (In some rules, the agency cites to both; in other rules, it cites to one or the other.)

Staff does not believe that either law grants the agency authority to promulgate these Rules. G.S. 143B-153 is the general grant of rulemaking authority for the Commission. Staff acknowledges that it contains several provisions for rulemaking, but it does not appear to govern this program. Further, the only mention of this specific program that staff was able to locate is in G.S. 143B-181.1, which delegates rulemaking authority to the Secretary of DHHS.

Further, G.S. 131D-6 establishes authority for the Social Services Commission to regulate adult day care programs. Those are regulated through the rules in 10A NCAC 06S. Therefore, it appears that this "adult day health services" program is a different program from the adult day care program.

Staff acknowledges that the Commission may have authority to promulgate these Rules, but it does not appear that the agency has cited to that authority in this submission. Therefore, staff recommends objection to all rules in these Subchapters as submitted for lack of statutory authority.

§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.

(a) It is the policy of this State to enable people who would otherwise need full-time care away from their own residences to remain in their residences as long as possible and to enjoy as much independence as possible. One of the programs that permits adults to remain in their residences and with their families is adult day care.

(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. The Department of Health and Human Services shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission.

(b1) An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

- (1) A statement of the overall philosophy and mission of the adult day care program and how it reflects the special needs of participants with dementia.
- (2) The process and criteria for providing or discontinuing special care services.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the participant's condition.
- (4) Staffing ratios and how they meet the participant's need for increased special care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias.
- (7) Frequency and type of participant activities provided.
- (8) Involvement of families in special care and availability of family support programs.
- (9) Additional costs and fees to the participant for special care.

(b2) As part of its certification renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult day care program subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(b3) Nothing in this section shall be construed as prohibiting an adult day care program that does not advertise, market, or otherwise promote itself as providing special care services for persons with Alzheimer's disease or other dementias from providing adult day care services to persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.

(b4) As used in this section, the term "special care service" means a program, service, or activity designed especially for participants with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(c) The Secretary may impose a civil penalty not to exceed one hundred dollars (\$100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c1) Any person, firm, agency, or corporation that harms or willfully neglects a person under its care is guilty of a Class 1 misdemeanor.

(d) The following programs are exempted from the provisions of this section:

- (1) Those that care for three people or less;
- (2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility; [and]
- (3) Those that are required by other statutes to be licensed by the Department of Health and Human Services. (1985, c. 349, s. 1; 1993, c. 539, s. 954; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a); 1998-215, s. 77; 1999-334, s. 2.2; 2001-90, s. 1; 2015-241, s. 12G.3(b).)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission – creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program. [The Commission has the following powers and duties:]

- (1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina.
- (2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
 - b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
 - c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;
 - d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services. The Commission shall establish standardized rates for child caring institutions. In establishing standardized rates, the Commission shall consider the rate-setting recommendations provided by the Office of the State Auditor; and
 - e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision.
- (2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
 - b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
 2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
 3. Contracting for and purchasing services; and
 4. Monitoring for effectiveness and compliance with State and federal law and regulations.
- (3) The Social Services Commission shall have the power and duty to establish and adopt standards:
- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
 - b. Repealed by Session Laws 1999-334, s. 3.5, effective October 1, 1999.
 - c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
 - d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
 - e. Repealed by Session Laws 1981, c. 562, s. 7.
 - f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.
- (4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.
- (5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.
- (6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

- (7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.
- (8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:
- a. A fee schedule for the payment of the costs of necessary child care in licensed facilities and registered plans for minor children of needy families.
 - b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
 - c. The payment of an administrative fee not to exceed two hundred dollars (\$200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.
 - d. Child support enforcement services as defined by G.S. 110-130.1.
- (9) The Commission shall adopt rules governing the obligations of counties to contribute financially to regional social services departments in accordance with G.S. 108A-15.3A(e). (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32; 1997-443, s. 11A.118(a); 1997-456, s. 22; 1997-506, s. 55; 1998-202, s. 4(z); 1999-334, s. 3.5; 2000-111, s. 4; 2000-137, s. 4(dd); 2000-140, s. 99(a); 2006-66, s. 10.2(c); 2011-145, s. 19.1(l); 2017-41, s. 4.5; 2017-102, s. 40(e); 2017-186, s. 2(hhhhhh).)

§ 143B-181.1. Division of Aging – creation, powers and duties.

(a) There is hereby created within the office of the Secretary of the Department of Health and Human Services a Division of Aging, which shall have the following functions and duties:

- (1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Health and Human Services for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;
- (2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;
- (3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;
- (4) To serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;
- (5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;
- (6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;
- (7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;
- (8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects;
- (9) To establish or help to establish demonstration programs of services to the aging;
- (10) To establish a fee schedule to cover the cost of providing in-home and community-based services funded by the Division. The fees may vary on the basis of the type of service provided and the ability of the recipient to pay for the service. The fees may be imposed on the recipient of a service unless prohibited by federal law. The local agency shall retain the fee and use it to extend the availability of in-home and community-based services provided by the Division in support of functionally impaired older adults and family caregivers of functionally impaired older adults;
- (11) To administer a Home and Community Care Block Grant for older adults, effective July 1, 1992. The Home and Community Care Block Grant shall be comprised of applicable Older Americans Act funds, Social Services Block Grant funding in support of the Respite Care Program (G.S. 143B-181.10), State funds for home and community care services administered by the Division of Aging, portions of the State In-Home and Adult Day Care funds

(Chapter 1048, 1981 Session Laws) administered by the Division of Social Services which support services to older adults, and other funds appropriated by the General Assembly as part of the Home and Community Care Block Grant. Funding currently administered by the Division of Social Services to be included in the block grant will be based on the expenditures for older adults at a point in time to be mutually determined by the Divisions of Social Services and Aging. The total amount of Older Americans Act funds to be included in the Home and Community Care Block Grant and the matching rates for the block grant shall be established by the Department of Health and Human Services, Division of Aging. Allocations made to counties in support of older adults shall not be less than resources made available for the period July 1, 1990, through June 30, 1991, contingent upon availability of current State and federal funding; and

- (12) To organize, coordinate, and provide staff support to the North Carolina Senior Tar Heel Legislature; [and]
- (13) To develop a strategic State plan for Alzheimer's disease. The plan shall address ways to improve at least all of the following with respect to Alzheimer's disease:
 - a. Statewide awareness and education.
 - b. Early detection and diagnosis.
 - c. Care coordination.
 - d. Quality of care.
 - e. Health care system capacity.
 - f. Training for health care professionals.
 - g. Access to treatment.
 - h. Home- and community-based services.
 - i. Long-term care.
 - j. Caregiver assistance.
 - k. Research.
 - l. Brain health.
 - m. Data collection.
 - n. Public safety and safety-related needs of individuals with Alzheimer's disease.
 - o. Legal protections for individuals living with Alzheimer's disease and their caregivers.
 - p. State policies to assist individuals with Alzheimer's disease and their families.

(b) The Division shall function under the authority of the Department of Health and Human Services and the Secretary of Health and Human Services as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Secretary of Health and Human Services shall adopt rules to implement this Part and Title 42, Chapter 35, of the United States Code, entitled Programs for Older Americans. (1977, c. 242, s. 4; 1981, c. 614, s. 19; 1987, c. 827, s. 244; 1991, c. 52, s. 1; c. 241, s. 1; 1993, c. 503, s. 2; 1997-443, s. 11A.118(a); 2014-100, s. 12D.5.)

Burgos, Alexander N

Subject: FW: Chapters 10A NCAC 67A, 68, 69, and 72

From: Penny, Paris <paris.penny@dhhs.nc.gov>
Sent: Tuesday, June 11, 2019 10:07 AM
To: May, Amber Cronk <amber.may@oah.nc.gov>
Subject: Chapters 10A NCAC 67A, 68, 69, and 72

Dear Rules Review Commission, through their Counsel:

Pursuant to NCGS §150B-21.10, the Rule-Making Coordinator for the North Carolina Social Services Commission is requesting the Rules Review Commission extend the period of review for Chapters 10A NCAC 67A, 68, 69, and 72, so that the North Carolina Social Services Commission may address the technical changes requested of them.

Paris Penny
Senior Policy Advisor
North Carolina Department of Health and Human Services

919-527-7257 office
Paris.Penny@dhhs.nc.gov

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Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this e-mail.

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this email in error, please notify the sender immediately and delete all records of this email.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R, all rules submitted

DEADLINE FOR RECEIPT: Friday, June 14, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form for each Rule:

In Box 6, I note the provided link is not the one you provided when you published in the NC Register. Which one is correct?

On Box 8, you published both that the fiscal note was approved by OSBM and not required, presumably because OSBM agreed with the agency's determination that a fiscal note was not required. As such, please check "No fiscal note required" in Box 8, as well as "Approved by OSBM"

In Box 9B, please provide some explanation of why you are readopting this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0101

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 8, why do you need "all"?

What authority are you relying upon for the language on lines 10-13? G.S. 131-6(d) states:

- (d) The following programs are exempted from the provisions of this section:
 - (1) Those that care for three people or less;
 - (2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility; [and]
 - (3) Those that are required by other statutes to be licensed by the Department of Health and Human Services. (1985, c. 349, s. 1; 1993, c. 539, s. 954; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a); 1998-215, s. 77; 1999-334, s. 2.2; 2001-90, s. 1; 2015-241, s. 12G.3(b).)

What other statute is requiring this licensure?

On lines 12-13, what is "federal legislation" Are you using this to mirror the language in G.S. 143-153(2a)(a)?

What authority are you relying upon in line 13 to assign certification to the county department? G.S. 131D-6(b) states:

- (b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. **The Department of Health and Human Services shall**

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 5, 2019

annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission.

On line 14, this is not the correct way to delete a period and add a comma. Treat punctuation as part of the word that precedes it and strike and replace the entire word. Thus, "... ~~Services.~~ Services, Division..."

In (b), line 15, define "timely and sufficient application"

On line 17, what is "limited" here?

On line 18, why are you referencing G.S. 150B-3 here? Do you even need it?

In the History Note, what part of G.S. 143B-153 are you citing to?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0101 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **SUBCHAPTER 06R - ADULT DAY CARE STANDARDS FOR CERTIFICATION**

4
5 **SECTION .0100 - INTRODUCTION**

6
7 **10A NCAC 06R .0101 CERTIFICATION REQUIREMENT**

8 (a) Subchapter 06R contains standards for certification of adult day care programs. The standards relate to all aspects
9 of operation of an adult day care program including administration, facility, and program operation. Adult day care
10 programs, as defined in G.S. 131D-6, shall be certified as meeting these standards. Programs exempted from
11 certification requirements by G.S. 131D-6 shall meet these standards for certification only if receiving funds
12 administered by the Division of Aging and Adult Services for social services programs established by federal
13 legislation. Certification is the responsibility of the county department of social services and the Department of Health
14 and Human Services, Division of Aging and Adult Services.

15 (b) Any program making application for certification or making timely and sufficient application for renewal of
16 certification shall be in compliance with all standards for certification. If all standards are not being met, certification
17 shall be denied or limited as appropriate. Certification of any program in willful violation of standards as defined in
18 Rule .0102(e) of this Subchapter shall be revoked. Procedures in G.S. 150B-3 shall be followed.

19
20 *History Note: Authority G.S. 131D-6; 143B-153;*

21 *Eff. July 1, 1979;*

22 *Amended Eff. July 1, 2007; October 1, 2000; July 1, 1990; January 1, ~~1986~~1986;*

23 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0102

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, what is "monitored in accordance with the Division of Aging and Adult Services criteria"? What is your authority to create this outside of rulemaking?

On line 6, what is the authority for the county DSS to identify issues?

On lines 7-10, what authority do you have to require the named inspectors to notify the program director of the issues?

On line 7, define "authorized" Authorized by whom/what – State law?

On lines 9-10, what authority do you have to require the county DSS to request corrective action, rather than the Department?

On line 10, what authority do you have to delegate this action to the local DSS?

In (b), line 13, define "immediate" danger and who determines this?

On line 14, define "immediate" corrective action.

On line 15, replace "Such" with "The"

Also on line 15, what must be documented within 72 hours? The violation or the correction of the violation?

In (c), line 16, who determines this potential?

In (d), line 19, define "directly"

In (e), line 23, delete or define "negative" action.

Alternatively, why not simplify the language to read:

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

Failure to take corrective action as required by Paragraphs (b), (c), and (d) of this Rule constitutes a willful violation of the standards for certification of adult day care programs. Willful violation shall lead to disciplinary action as set forth in Rules .0802, .0804, and .0805 of this Subchapter.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0102 is readopted as published in 33:17 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0102 CORRECTIVE ACTION**

4 (a) Adult day care programs shall be inspected annually and monitored in accordance with the Division of Aging and
5 Adult Services criteria for making announced and unannounced visits to assure compliance with the standards. Where
6 a violation of G.S. 131D-6 or of this Subchapter is identified by staff of the county department of social services or
7 the Division of Aging and Adult Services, or other authorized inspectors such as environmental health specialists,
8 building and fire safety inspectors, the program director of the adult day care program shall be notified in writing of
9 the nature of the violation by that inspector and requested to take corrective action by the county department of social
10 services. The county department of social services shall determine, in consultation with the program director, the date
11 by which corrective action shall be completed based upon the severity of the violation and the effect of the violation
12 on the participants of the program.

13 (b) Where a violation presents an immediate danger to the participants' health or safety, the program director shall
14 take immediate corrective action to correct the source of danger or to remove the participants from the source of
15 danger. Such action shall be documented in writing within 72 hours.

16 (c) Where a violation has the potential to endanger the participants' health, safety, or welfare, the program director
17 shall take corrective action. The date specified for the completion of the corrective action shall be no later than 30
18 days of written notification.

19 (d) Where a violation does not directly endanger the participants, such as a violation of administrative or record
20 keeping standards, the program director shall take corrective action. The date specified for the completion of the
21 corrective action shall be within 90 days of written notification.

22 (e) If the violation continues beyond the established time for completion of corrective action, the program shall be
23 considered to be in willful violation of the standards and negative action shall be taken in accordance with Rules .0802,
24 .0804, and .0805 of this Subchapter.

25
26 *History Note: Authority G.S. 131D-6; 143B-153;*

27 *Eff. January 1, 1986;*

28 *Amended Eff. July 1, 2007; June 1, 2000; July 1, ~~1990~~ 1990;*

29 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0201

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

On line 6, delete “unless the context requires otherwise”

In (1), lines 7 and 8, replace the semicolons with commas.

In (2), line 9, “little effort” for whom?

What do you mean on line 10 “sacrificing safety and health concerns”?

In (7), lines 19-21 recite G.S. 131D-6(b). Do you need to retain it here?

On line 21 and elsewhere the term is used, what is a “adult day health program”?

On line 22, is the term “day care and combined adult day health programs”? Or is it “day care, and combined ...” so that it’s separated by a comma?

In (11), line 30, define “regularly”

On line 31, define “continuous”

On lines 31 and 32, delete “assistance with” both places, so the sentence reads “... assistance with preparation of meals, housework, and personal grooming.”

In (14), Page 2, line 2, define “sufficient severity” Who determines this?

What is the purpose of the sentence on lines 2-3?

In (15), lines 5 and 7, replace “and/or” with “or” as “and/or” is not allowed in Rules.

On line 7, delete the comma after “interact”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

In (16), lines 8 and 10, delete the parenthesis. On line 8, insert a comma after “supplies” so the sentence reads “... supplies, such as bandages...”

In (17), line 12, define “full”

In (19), you do not use this term again as defined here within the Subchapter. Delete it.

In (20), line 21, who determines what is “necessary”?

In (25), line 31, insert a “that are” before “located”

In (28), line 36, as you did not publish the struck comma after “person” in the Register, simply remove it.

In (29), Page 3, I note you only use this term one other place in the Subchapter – that’s in the definition in (40). Do you need it here?

If you need to retain it, who determines if it will benefit from the monitoring?

In (34), line 11, what are “other interested parties”?

On line 12, what information will this be? Who determines what goes into the notes?

In (35), this term is only used again in the Subchapter in the definition in Item (40). Do you need to retain it here?

In (36), line 16, define “temporary”

On line 16, delete “Primarily,” and just state “Respite care is provided...”

In (40), you are essentially reciting G.S. 131D-6(b1):

An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

However, you are adding “related disorders” What is your authority to add to the statutory provisions?

In (41), what authority do you have to delegate to the county DSS the authority to monitor this?

Assuming you have it, line 30, replace “in which” with “where”

On line 32, define “on-going basis”

In the History Note, do not cite to S.L. 199-334, as that has been codified.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0201 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **SECTION .0200 - DEFINITION OF TERMS**
4

5 **10A NCAC 06R .0201 DEFINITIONS**

6 As used in this Subchapter, unless the context requires otherwise, the following definitions shall apply:

- 7 (1) "Activities of Daily Living (ADL)" means eating; dressing; bathing; toileting; bowel and bladder
8 control; transfers; and ambulation.
- 9 (2) "Adaptable space" means space in a facility that can be used for several purposes with little effort
10 and without sacrificing safety and health standards; for example, an activities room that is used for
11 crafts in the morning, used to serve lunch and used for exercise activities in the afternoon.
- 12 (3) "Adaptable activity" means an activity where participation can be varied from individual, small
13 group, or large group, and can occur seated, standing or lying down.
- 14 (4) "Adult" means an individual 18 years of age or older.
- 15 (5) "Adult Day Care Center" means a day care program operated in a structure other than a single family
16 dwelling.
- 17 (6) "Adult Day Care Home" means a day care program for up to 16 people operated in a single family
18 dwelling where the owner resides.
- 19 (7) "Adult Day Care Program" means the provision of group care and supervision in a place other than
20 their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally
21 disabled. This term is used to refer to adult day care programs, adult day health programs, and adult
22 day care and combined adult day health programs (i.e., combination programs).
- 23 (8) "Alzheimer's Disease" means a progressive, degenerative disease of the brain resulting in impaired
24 memory, thinking and behavior. Characteristic symptoms of the disease include gradual memory
25 loss, impaired judgement, disorientation, personality change, difficulty in learning and loss of
26 language skills.
- 27 (9) "Ambulatory" means a person who is mobile and does not need the continuing help of a person or
28 object for support (except a walking cane).
- 29 (10) "Capacity" means the number of participants for which a day care program is certified.
- 30 (11) "Caretaker" (or "Caregiver") means an adult who regularly provides an impaired adult with
31 continuous supervision, assistance with preparation of meals, assistance with housework and
32 assistance with personal grooming.
- 33 (12) "Certification" means the process whereby an adult day care program is approved as meeting the
34 North Carolina Adult Day Care Rules in 10A NCAC 06.
- 35 (13) "Certifying agency" means the Department of Health and Human Services, Division of Aging and
36 Adult Services.

- (14) "Dementia" means the loss of intellectual functions (such as thinking, remembering, and reasoning) of sufficient severity to interfere with a person's daily functioning. Dementia is not a disease itself but rather a group of symptoms that may accompany certain diseases or conditions. Symptoms may also include changes in personality, mood and behavior.
- ~~(15)~~ "Direct Participant Care" means the opportunity for employees, volunteer(s) and/or substitute(s) of the facility or individuals with whom the facility contracts either directly or through an agency to physically interact, with, be in the presence of, and/or supervise participants.
- ~~(16)~~ "First Aid Kit" means a collection of first aid supplies (such as bandages, tweezers, scissors, disposable nonporous gloves, adhesive tape, antiseptic, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- ~~(17)~~ "Governing Body" means the individual(s), organization, agency, corporation, or other entity that has full legal responsibility for policy, management, administration, operation, and financial liability for the adult day care or adult day health program.
- ~~(15)~~~~(18)~~ "Group process" means at least three persons engaged in a common activity.
- ~~(16)~~~~(19)~~ "Institution" means a facility that is established to serve a particular purpose and is required by state law to be provided and maintained by the state and any facility defined in federal regulations as an institution. In North Carolina, the list of institutions includes: general hospitals, state psychiatric hospitals, state centers for the mentally ill, skilled nursing facilities, and intermediate care facilities.
- ~~(17)~~ ~~(20)~~ "Instrumental Activities of Daily Living (IADL)" means meal preparation, medication intake, housekeeping, money management, phone use, laundering, reading, shopping, communication such as speaking, writing, signing, gestures, using communication devices and going to necessary activities.
- ~~(18)~~~~(21)~~ "Medication schedule" means a listing of all medications taken by participants with dosages, route of administration, and times medications are to be taken.
- ~~(19)~~~~(22)~~ "Mental health disability" means disorders with psychological or behavioral symptoms or impairment in functioning due to a social, psychological, genetic, physical, chemical or biological disturbance.
- ~~(20)~~ ~~(23)~~ "Modifiable activity" means an activity that can be simplified and adapted as a participant's abilities decline or improve.
- ~~(21)~~ ~~(24)~~ "Non-ambulatory" means a person who is bedfast.
- ~~(22)~~ ~~(25)~~ "Nucleus area" means adult day care programs located in a multi-use building and refers to the area not shared by any other programs located in the building but used only by the adult day care program.
- ~~(23)~~ ~~(26)~~ "Nursing care" means skilled nursing care or intermediate care.
- ~~(24)~~ ~~(27)~~ "On-site" means the area certified for the day care program.
- ~~(25)~~ ~~(28)~~ "Owner" means the person, who is responsible for management, operation, and financial liability of a day care home or day health home.

~~(26)~~ (29) "Other special needs disease or condition" means a diagnosis, disease or disability, such as AIDS/HIV, that benefits from monitoring or oversight in a supervised setting.

~~(27)~~ (30) "Participant" means a person enrolled in an adult day care program.

~~(28)~~ (31) "Personal care" means tasks that range from assistance with basic personal hygiene and grooming, feeding, and ambulation, to medical monitoring and other health care related tasks.

~~(29)~~ (32) "Physical therapy program" means a series of activities prescribed by a licensed physical therapist or activities administered under the supervision of a physical therapist.

~~(30)~~ (33) "Program director" means the person responsible for program planning, development and implementation in a day care program.

~~(31)~~ (34) "Progress notes" means written reports in the participant's file of staff discussions, conferences, or consultation with family or other interested parties, for the purpose of evaluation of a participant's progress and any other information regarding the participant's situation.

~~(32)~~ (35) "Related disorders" means dementia or impaired memory characterized by irreversible memory dysfunction.

~~(33)~~ (36) "Respite care," as a component of adult day care programs, means a service provided to give temporary relief to the family or caregiver. Primarily, respite is provided to families caring for children or adults with disabilities or families caring for frail or disabled older adults.

~~(34)~~ (37) "Responsible party" means the caretaker with primary day-to-day responsibility for an impaired adult.

~~(35)~~ (38) "Semi-ambulatory" means a person who needs and uses the assistance of objects such as a wheelchair, crutches, walker, or other appliance or the support of another person on a regular and continuing basis to move about.

~~(36)~~ (39) "Senior center" means a community or neighborhood facility for the organization and provision of services including health, social, nutritional and educational services and a facility for recreational and group activities for older persons.

~~(37)~~ (40) "Special care services" means services by a certified adult day care program that promotes itself as providing programming, activities or care specifically designed for persons with Alzheimer's or other dementias, or related disorders, mental health disabilities, or other special needs diseases or conditions.

~~(38)~~ (41) "Supervising agency" means the county department of social services in the county in which the day care program is located. The county department is responsible for seeing that certification standards are met on an on-going basis and for making a recommendation to the Division of Aging and Adult Services regarding certification.

*History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334;
Eff. January 1, 1981;
Amended Eff. July 1, 1990; January 1, 1986; July 1, 1984;*

1 *Temporary Amendment Eff. September 28, 1999;*
2 *Amended Eff. July 1, 2007; July 17, ~~2000~~ 2000;*
3 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0302

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

What is the purpose of the Rule? If it's to require written goals for the adult day care program to ensure it meets the goals of Rule 10A NCAC 71R .0903, why not just state that?

On line 4, what is "program"?

On line 4, delete "stated"

On line 4, define or delete "character"

On line 5, define "consistent"

In the History Note, what part of G.S. 143B-153 are you relying upon for this Rule?

Why are you not citing to G.S. 31D-6?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0302 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0302 PROGRAM GOALS**

4 The program shall have stated goals to guide the character of the services given. These goals shall be in writing and
5 consistent with the definition of adult day care services as stated in 10A NCAC 71~~QR~~ .0903.

6
7 *History Note: Authority G.S. 143B-153;*

8 *Eff. July 1, 1978;*

9 *Amended Eff. July 1, 1990; January 1, ~~1983-1983~~;*

10 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0304

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

On line 4, define “adequate”

In the History Note, what part of G.S. 143B-153 are you relying upon for this Rule?

Why are you not citing to G.S. 31D-6?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0304 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0304 INSURANCE**

4 The governing body shall provide for adequate liability insurance coverage for the facility and vehicles used by the
5 program.

6
7 *History Note: Authority G.S. 143B-153;*

8 *Eff. July 1, ~~1978~~ 1978;*

9 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0305

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(1), line 5, I am simply asking – do you need to retain the January 1, 2003 date, given that this was 16 years ago?

On line 6, what are “structural building modifications”?

On line 6, what is “this date”? January 1, 2003?

In (a)(2), what does this mean? Who determines this? Are the goals the one referenced in Rule .0302?

On line 8, who decides what is needed? The program director?

On line 8, replace “which” with “that”

In (a)(3), line 9, capitalize “Statewide” if you mean to refer to “NC” (and it appears you are, based upon Rule .0508(b)(8)(B))

On line 10, what is “an agency approved” by AOC? How does one know who that is?

On line 11, the term is “Office” (singular)

In (a)(4), line 12, I suggest replacing “The” with “Each”

On line 13, what is “to whom employee is responsible”? Should this be “to whom the employee reports”?

Insert an “and” before “duties” on line 13.

On line 14, this is not the proper way to add a period. Please use the language that you published in the NC Register, as that is formatted properly.

In (a)(5), what are the contents of the references? How many are required? Is this solely up to the program?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

On line 15, should “of” before “former” be “from”?

In (a)(6), line 17, established where? By whom?

In (a)(7), line 20, what is “documentation” here?

On line 21, “recorded” where and by whom and for how long? Are there any requirements for this here, or is this entirely up to each facility?

In (a)(8), line 23, define “usual”

On line 23, what is this ratio? What is set forth in Paragraph (c)?

On line 25, where is the requirement for regular employees to have current CPR and First Aid training?

In (b)(1), why not simplify the language on lines 33-35 and state, “Each adult day care program shall establish written personnel policies, and provide a copy to each employee. Personnel policies shall address:”

End (b)(1)(A) through (N) with semicolons, not commas.

In (b)(1)(B), what are “educational opportunities”?

In (b)(2), Page 2, lines 14-15, what are these regulations? Where are they located? Please provide the citation.

In (c), lines 16-19, this is a restatement of (a)(8). Why do you need it here?

On line 17, define “adequate”

In (c)(1), line 21, replace “six” with “6” (see Rule 26 NCAC 02C .0108(9)(c))

In (c)(2), line 25, I am simply asking - is there no limit on the total number of participants?

In (d)(1), line 29, what are “established policies”?

In (d)(2)(B), line 35, state “a combination of a minimum...”

In (d)(2)(D), Page 3, this is a restatement of (a)(9). Why do you need it here? If you do need it, shouldn't you replace “employee” with “program director” on lines 3 and 4?

In (d)(2)(E), I note that this is similar to (a)(5), but contains much more information. Should (a)(5) mirror this?

What does any part of (d)(3) mean? What do you mean “consider”? If they don't exhibit the “characteristics” then what – can they not be hired? This is written as an aspirational statement or guidance, and not a requirement. Either tighten this language or delete it.

In (d)(3)(C), lines 14-15, what is this? What is “varied” and “structured”

In (d)(4), line 18, what is “full-time”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0305 is readopted as published in 33:17 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0305 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF**

4 (a) General Requirements

- 5 (1) The owner of adult day care homes initially certified after January 1, 2003, or homes that make
6 structural building modifications after this date, shall reside in the home.
- 7 (2) Staff positions shall be planned and filled according to the goals of the program and the manpower
8 needed to develop and direct the activities which meet these goals.
- 9 (3) There shall be a statewide criminal history records search of all newly-hired employees of adult day
10 programs for the past five years conducted by an agency approved by the North Carolina
11 Administrative Offices of the Courts.
- 12 (4) There shall be a written job description for each position, full-time or part-time. The job description
13 shall specify qualifications of education and experience; to whom employee is responsible; duties
14 and responsibilities; ~~and salary range.~~
- 15 (5) References, including ~~former employers~~ employment verification of former employers, shall be
16 required in recruitment of staff.
- 17 (6) There shall be an established review process for each employee at least annually and following any
18 probationary period.
- 19 (7) There shall be a written plan for orientation and staff development of new employees and volunteers
20 and ongoing development and training of all staff. Documentation of such orientation, staff
21 development and training shall be recorded.
- 22 (8) There shall be a written plan for staff substitutions in case of absences. The plan shall include the
23 coverage of usual responsibilities as well as maintenance of staff/participant ratio. Substitute staff
24 shall have the same qualifications and training as those required by the position and in this
25 Subchapter. Substitutes are not required to have current certified CPR and First Aid training as long
26 as other staff are present with this training at all times. Trained volunteers may be used instead of
27 paid substitutes.
- 28 (9) Prior to beginning employment, each new employee shall present a written medical statement,
29 completed within the prior 12 months by a physician, nurse practitioner or physician's assistant,
30 certifying that the employee has no illness or health condition that would pose a health risk to others
31 and that the employee can perform the duties assigned in the job.

32 (b) Personnel Policies

- 33 (1) Personnel policies and their content are the responsibility of each adult day care program. Each
34 program shall state its policies in writing. A copy of this statement of personnel practice shall be
35 given to each employee and shall state the program's policy on the following:
- 36 (A) annual leave,
- 37 (B) educational opportunities,

- (C) pay practices,
- (D) employee benefits,
- (E) grievance procedures,
- (F) performance and evaluation procedures,
- (G) criteria for advancement,
- (H) discharge procedures,
- (I) hiring and firing responsibility,
- (J) use of any probationary period,
- (K) staff participation in reviews of personnel practices,
- (L) maternity leave,
- (M) military leave,
- (N) civil leave (jury duty and court attendance), and
- (O) protection of confidential information.

- (2) All policies developed shall conform to the United States Department of Labor wage and hour regulations.

(c) Staffing Pattern. The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of staff to participants shall be adequate to meet the goals and objectives of the program. Whenever regularly scheduled staff are absent, substitutes shall be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) Adult Day Care Homes

One full-time equivalent staff person with responsibility for direct participant care for each six participants, up to 16 participants total.

- (2) Adult Day Care Centers

One full-time equivalent staff person with responsibility for direct participant care for each eight participants.

(d) Program Director

- (1) The program director shall have the authority and responsibility for the management of activities and direction of staff to ensure that activities and services are provided in accordance with established program policies.

- (2) The program director shall:

- (A) be at least 18 years of age;
- (B) have completed a minimum of two years of post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges, universities, technical institutes, and correspondence schools) or have a high school diploma or the equivalent and a combination minimum of five years experience and training in services to elderly or adults with disabilities;
- (C) have at least two years of work experience in supervision and administration;

(D) present prior to employment, a written medical statement, completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and that the employee can perform the duties assigned on the job; and

(E) provide at least three reference letters or the names of individuals who can be contacted, with whom a reference interview can be conducted, including at least one former employer, one of which shall include previous employment verification. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.

(3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit these characteristics:

(A) ability to make decisions and set goals;

(B) knowledge and understanding of the needs of the aging and disabled;

(C) ability to design and implement a varied, structured program of group and individual activities; and

(D) managerial and administrative skills - ability to supervise staff and to plan and coordinate staff training.

(4) The adult day care program shall have a full-time program director or a full-time substitute meeting the requirements as specified in this Paragraph. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.

History Note: Authority G.S. 131D-6; 143B-153;

Eff. July 1, 1978;

Amended Eff. September 1, 2007; July 1, 2007; May 1, 1992; July 1, 1990; July 1, 1984; January 1, 1981; 1981;

Readopted Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0401

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, what is the difference between the "facility" and "grounds"?

On line 6, approved how?

On line 7, what is your authority to require approval by the county DSS?

In (b), line 9, what are these "applicable" zoning laws? Does your regulated public know?

In (c), line 11, what does this sentence mean? Why do you need it?

Assuming you do, define "opportunities" and "quiet times"

In (d), line 13, generally terms like "at least" are not favored in rules, as rules set the minimum standard. However, I take it you need to retain the term here?

On line 14, state "This minimum square footage requirement excludes..."

In (e), lines 15-16, state "... the kitchen shall comply with the rules in 15A NCAC 18A .3300" In addition, if you are going to enforce these CPH rules, you need to incorporate them by reference using G.S. 150B-21.6, as you did in Paragraph (g) of this Rule for the Accessibility Code. Please note, you do not have to give a website to find them – just state whether you are incorporating subsequent amendments.

In (f), line 17, replace "must" with "shall"

Also on line 17, define "adequate" and "clean" and "dirty" (will a towel that was used to wash hands be "dirty"?)

On line 18, what are "program supplies"?

On line 19, insert a comma after "products" and remove the parenthesis and insert "such as" and "etc." so it reads, "... harmful products, such as cleaning fluids and disinfectants, shall be provided."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

In (g), lines 21-23, I do not believe that Code exists anymore, but was instead folded into the Building Code. Please update this accordingly.

In (h), line 27, what do you mean by “slippery”? Are tile floors not allowed?

In (j), line 30, identified how? Will this be in the certification?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 06R .0401 is readopted as published in 33:17 NCR 1753-1761 as follows:

2
3 **SECTION .0400 - THE FACILITY**
4

5 **10A NCAC 06R .0401 GENERAL REQUIREMENTS**

6 (a) The facility and grounds of an adult day care program shall be approved by the local environmental health
7 specialist, the local fire safety inspector, the county department of social services, and the North Carolina Division of
8 Aging and Adult Services.

9 (b) The facility shall comply with all applicable zoning laws.

10 (c) There shall be adaptable spaces, as defined in Rule .0201(2) of this Subchapter, suitable for activities for
11 participants. Spaces shall provide opportunities for participants to get together as a group as well as privacy for quiet
12 times.

13 (d) The facility shall provide at least 40 square feet of indoor space for each participant in the portion of the buildings
14 utilized for adult day care programs. This minimum square footage excludes hallways, offices, and restrooms.

15 (e) If meals are prepared within the facility, the kitchen shall meet environmental health rules, as defined in 15A
16 NCAC 18A .3300.

17 (f) Storage areas must be adequate in size and number for storage of clean linens, dirty linens, cleaning materials,
18 household supplies, food, equipment, and program supplies. A separate locked area for storing poisons, chemicals or
19 other potentially harmful products (cleaning fluids, disinfectants, etc.) shall be provided.

20 (g) A minimum of one male and one female toilet shall be located in each facility and accessible in accordance with
21 the North Carolina Accessibility Code, which is hereby incorporated by reference, including any subsequent
22 amendments or additions and can be obtained through the North Carolina Department of Insurance, 1202 Mail Service
23 Center, Raleigh, NC 27699-1202 at a cost of sixty-two dollars and 00/100 (\$62.00). One toilet shall be available for
24 each 12 adults, including staff and participants who utilize the facility. One hand lavatory shall be provided for each
25 two toilets.

26 (h) All rugs and floor coverings must be fastened down. Loose throw rugs are not allowed. Floors shall not be
27 slippery.

28 (i) A telephone shall be available for participants to make and receive calls. ~~A pay station telephone is not acceptable~~
29 ~~for local calls.~~

30 (j) Unless identified by the Division of Aging and Adult Services as shared space, the area certified for adult day care
31 shall be used for the sole purpose of the adult day care program and its activities during hours of program operation.

32
33 *History Note: Authority G.S. 131D-6; 143B-153;*

34 *Eff. July 1, 1978;*

35 *Amended Eff. September 1, 2007; July 1, 1990; January 1, ~~1981~~, 1981;*

36 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0403

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), why do you need the sentence on lines 4 – 5? I suggest you delete it.

If you need to retain it, then please address the following:

Why is “Day Care” capitalized?

On line 4, what are “the needs”?

On line 4, what do you mean by “enable”?

On line 5, define or delete “efficient”

In (a)(1), line 6, define “sturdy”

On line 7, so that I’m clear – you are not requiring the chairs if participants or staff are in wheelchairs or other specialized seating equipment?

In (a)(2), line 8, define “adequate”

In (a)(3), line 10, what is “soft material”? And how is it different from “upholstered”?

On line 11, what is “relax and rest”? Why not just state “so that at least half of the participants can sit in these chairs at the same time”?

On line 12, replace “such” with “this”

On line 13, you are deleting “participants;” and replacing it with “participants.” from the existing language in the Code without showing it. Please show the change.

In (b), line 17, define “good condition” and “safe for use”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0403 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0403 EQUIPMENT AND FURNISHINGS**

4 (a) Adult Day Care facility equipment and furnishings shall meet the needs of participants and staff and enable
5 efficient operation of the program. The facility shall have:

- 6 (1) at least one sturdy straight back chair or sturdy folding chair for each participant and each staff
7 person, excluding those in wheelchairs or other specialized seating equipment;
8 (2) table space adequate for all participants to be served a meal at a table ~~at the same time~~ and for
9 program activities;
10 (3) chairs or sofas that allow for position changes, are upholstered or of soft material, and water and
11 stain resistant, so that at least half of the participants can relax and rest at the same time. If all
12 participants take a daily rest period at the same time, the facility shall have enough of such seating
13 for all participants. The seating requirement does not apply if the participant utilizes a wheelchair
14 or other specialized seating equipment; and
15 (4) a quiet space or room with a minimum of one bed or cot so that participants can lie down as needed
16 separate from other program activities.

17 (b) All equipment and furnishings shall be in good condition and safe for use by all participants and staff of the
18 facility.

19
20 *History Note: Authority G.S. 131D-6; 143B-153;*
21 *Eff. July 1, 1978;*
22 *Amended Eff. July 1, 2007; January 1, ~~1981~~1981;*
23 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0501

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a)(1), lines 7-8, why not combine these? “Each adult program shall have written policies that define the population served.”

On line 8, what are “program policies”?

On line 8, state “These policies shall serve as...”

On line 9, delete or define “appropriate”

On line 10, define “specific”

On line 12, define “safely”

On line 13, what are the “admissions criteria”?

In (a)(2), line 14, what is the “other caregiver” Should you delete “other” here?

On line 14, do you need to retain “minimum”? What about on line 15?

On line 16, what are “social” needs?

On line 16, “designated” by whom?

On line 19, what is involved in this application?

In (a)(3), line 22, what is contained in this report?

In (a)(4), line 26, what are “program policies”?

In (a)(5), line 28, when is this agreement given? Was it when they submitted the application?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 5, 2019

In (a)(6)(C), line 35, what are these rights?

In (a)(6)(E), what is included in this policy? Is this all advance directives, including a POA and DNR?

In (a)(6)(G), Page 2, line 2, and (H), line 3, please begin these with articles like “the” to be consistent with the rest of the rule.

In (b)(1), line 7, delete or define “comprehensive”

On line 9, what are “activities of daily living”? I see that IADL is defined, so what is the difference between the two?

On line 10, does “status” apply to “mental” and “social” and “living environment” and “economic” and “physical health” or just “physical health”?

On line 12, what is the “adult day health” program?

On line 12, should it read “the physical health component” to be consistent with line 10?

In (b)(2)(C), line 21, “measurable” by whom?

In (b)(4), why do you need this in light of the language in (b)(2), lines 14-15? Is this to capture changes to the plan?

In (b)(5), line 30, define “unusual”

On line 32, who is the “responsible party”? I see it’s defined in Rule .0201, but it won’t be the family or caregiver?

On line 33, when did this designation occur?

In (b)(7), Page 3, lines 2-3, what are the contacting the individual for? To get the reason for missing the day?

In (b)(8), line 4, what do you mean by “responsible”? And what authority do you have to remove it on line 6?

On line 6, replace “which” with “that”

In (c)(1), line 10, replace “which” with “that”

In (c)(1)(A), line 11, replace “are” with “shall be”

In (c)(1)(B), line 12, what is “primary group mode” and “group process”?

Replace “is” with “shall be”

In (c)(1)(C), line 14, replace “are” with “shall be”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

And adaptable and modifiable by whom? The participant or staff?

In (c)(1)(D), line 16, replace “are” with “shall be”

In (c)(1)(E), line 17, replace “are” with “shall be”

On line 18, who are they in “as much as they are able”? The staff or the participants?

In (c)(1)(F), line 20, replace “are” with “shall be”

In (c)(2), who will determine if this has been designed properly?

In (c)(4)(B), (D), (E), (F), and (G), how will this be determined? And what does this mean?

In (c)(5)(C), line 8, define “prominent”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 06R .0501 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **SECTION .0500 - PROGRAM OPERATION**
4

5 **10A NCAC 06R .0501 PLANNING PROGRAM ACTIVITIES**

6 (a) Enrollment Policies and Procedures

- 7 (1) Each adult program shall have enrollment policies. Enrollment policies shall be in writing as a part
8 of the program policies and shall define the population served. These policies serve as the basis for
9 determining who shall be accepted into the program and for planning activities appropriate for the
10 participants. The policies shall be specific to prevent enrolling people whose needs cannot be met
11 by the planned activities and shall provide for discharge of participants whose needs can no longer
12 be met or who can no longer be cared for safely. If a day care program serves semi-ambulatory or
13 non-ambulatory persons, it shall be so stated in the admissions criteria.
- 14 (2) Prior to enrollment, the applicant, family members or other caregiver shall have a minimum of one
15 personal interview with a minimum of one program staff member. During the interview, the staff
16 shall complete initial documentation identifying social and medical care needs, any designated
17 spiritual, religious or cultural needs, and a determination of whether the program can meet the
18 individual's expressed needs. The staff person doing the interviewing shall sign the determination
19 of needs and the applicant, family member or other caregiver shall sign the application for
20 enrollment. These signed documents shall be obtained before the individual's first day of attendance
21 as a participant in the program.
- 22 (3) A medical examination report signed by a physician, nurse practitioner or physician's assistant,
23 completed within the prior three months, shall be obtained by the program within 30 days of
24 enrollment. This report must be updated annually no later than the anniversary date of the initial
25 report.
- 26 (4) At enrollment, or in the initial interview, the program policies shall be discussed with the applicant,
27 family member or other caregiver and a copy of the program policies shall be provided.
- 28 (5) Documentation of receipt of and agreement to abide by the program policies by the applicant, family
29 member or other caregiver shall be obtained by the program and kept in the participant's file.
- 30 (6) The program policies shall contain:
- 31 (A) a discharge policy outlining the criteria for discharge and notification procedures for
32 discharge, the timeframe and procedures for notifying the applicant, family member or
33 other caregiver of discharge, and referral or follow-up procedures;
- 34 (B) a medication policy as specified in Rule .0505 of this Section;
- 35 (C) a description of participant's rights;
- 36 (D) grievance policies and procedures for families;
- 37 (E) advance directives policy;

- (F) non-discrimination policies;
- (G) procedure to maintain confidentiality;
- (H) policy on reporting suspected abuse or neglect;
- (I) description of the geographical area served by the program; and
- (J) inclement weather policies.

(b) Planning Services for Individual Participants

- (1) Within 30 days of enrollment of a new participant, the program shall perform a comprehensive assessment and written service plan for each individual. The assessment shall address the individual's ability to perform activities of daily living and instrumental activities of daily living while in the program. The mental, social, living environment, economic and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the program director or the director's designee. For adult day health participants the health component of the service plan shall be written and signed by a registered nurse.
- (2) In developing the written service plan, the program shall include input from the participant, family members, or other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed at regular intervals, and no less than once every six months. The service plan shall include:
 - (A) the needs and strengths of the participant;
 - (B) the interests of the participant;
 - (C) the measurable service goals and objectives of care for the participant while in the day care program;
 - (D) the type of interventions to be provided by the program in order to reach desired outcomes;
 - (E) the services to be provided by the program to achieve the goals and objectives;
 - (F) the roles of participant, family, caregiver, volunteers and program staff; and
 - (G) the time limit for the plan, with provision for review and renewal.
- (3) Progress notes in the participant's record shall be updated at least every three months.
- (4) The participant, caregiver, and other service providers may contribute to the development, implementation and evaluation of the service plan.
- (5) Any unusual behavior, change in mood, change in attitude or need for help or services shall be reported by the program. If the participant is a social services client, the report shall be made to the participant's family, caregiver, or responsible party and the department of social services worker or the social worker designated as consultant to the day care program by the department. If the participant is not a social services client, the report shall be made to the person's family, caregiver or responsible party. A note shall be made in the participant's record of action taken.
- (6) The participant or the responsible party may choose the days and number of days the participant will attend, with the program director's approval.

(7) The reason for any unscheduled participant absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent participant or the responsible party.

(8) The adult day care program is responsible for the participant when a participant is registered in attendance. A participant leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a participant has emotional or mental impairment which requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver, friend, or responsible party shall sign the person out.

(c) Program Activities Plan

(1) The day care center or home shall have a program activities plan which meets the following criteria:

(A) Overall planning of activities are based on elements of the individual service plans.

(B) The primary program mode is the group process, both large and small groups, with provision for individual activities and services as needed.

(C) Activities are adaptable and modifiable to allow for greater participation and to maintain participant's individual skill level.

(D) Activities are consistent with the stated program goals.

(E) Activities are planned jointly by staff and participants. Staff shall encourage participants to participate in the planning and operation of the program as much as they are able, and to use their skills, talent and knowledge in program planning and operation.

(F) All program activities are supervised by program staff.

(G) Participants may refuse to participate in any given activity.

(2) The activities schedule shall provide for the inclusion of cognitive activities to be available on a daily basis, and be designed to:

(A) stimulate thinking and creativity;

(B) provide opportunities for learning new ideas and skills;

(C) help maintain existing reasoning skills and knowledge base; and

(D) provide opportunities to utilize previously learned skills.

(3) The activities schedule shall provide for the inclusion of physical activities to be available on a daily basis, and be designed to:

(A) improve or maintain mobility and overall strength; and

(B) increase or maintain joint range of motion.

(4) The activities schedule shall provide for the inclusion of psychosocial activities to be available on a daily basis, and be designed to:

(A) provide opportunities for social interaction;

(B) develop a sense of belonging;

(C) promote goal-oriented use of time;

(D) create feelings of accomplishment;

- 1 (E) foster dignity and self-esteem;
- 2 (F) prompt self-expression; and
- 3 (G) provide fun and enjoyment.
- 4 (5) The activities schedule shall:
 - 5 (A) be in writing, specifying the name of each activity to be provided, the days of the week
 - 6 each activity shall be conducted, and the approximate length of time of each activity;
 - 7 (B) indicate the length of time the schedule is to be followed; and
 - 8 (C) be posted weekly or monthly in a prominent place in the facility.
- 9

10 *History Note: Authority G.S. 131D-6; 143B-153;*
11 *Eff. July 1, 1978;*
12 *Amended Eff. February 1, 2008; July 1, 2007; July 1, 1990; January 1, ~~1984-1981~~;*
13 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0502

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 4, should this read “adult day care program” to conform with the definition in Rule .0201?

On line 4, what is “midday”? Is it 11 a.m., 2 p.m.? Does your regulated public know?

On line 7, delete “viewed and downloaded from the Internet” and replace it with “accessed at no cost”

Line 8, in NC, the State licenses “dietitian/nutritionist” If you mean to refer to NC licensees, please update the spelling of dietitian.

On line 8, “approve” how?

In (b), line 9, what are these needs? How are they determined?

Lines 10-11, how is this accomplished? What is the “minimum” here?

In (c), line 15, how is “sufficient to assure ability” determined here?

On line 15, since you refer to different practitioners on line 12, replace “a physician” with “the” or “a practitioner”

In (d), line 16, what is a “consultation” here?

On line 16, what are the “basic and special nutritional needs”?

On line 17, define “proper”

In (f), line 20, define “sanitary” and “safe”

On line 22, the url no longer works. And do not place any url in parenthesis.

Amanda J. Reeder

Commission Counsel

Date submitted to agency: June 5, 2019

But why do you need a url – don't the rules in 18A .3300 suffice here?

On line 23, what rules are these? If they are .3300, you may have already incorporated these by reference in Rule .0401 and would not need to do so again. If you do need to do so, only state "including subsequent amendments." and delete the rest of the language, including the url.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0502 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0502 NUTRITION**

4 (a) An adult day program shall provide a midday meal to each participant in attendance. The meal shall provide at
5 least one-third of an adult's daily nutritional requirement as specified by the United States Department of Agriculture,
6 Dietary Guidelines for Americans, which are incorporated by reference, including any subsequent amendments or
7 additions to these guidelines. These guidelines may be viewed and downloaded from the Internet at
8 <http://www.health.gov/dietaryguidelines/>. A licensed dietician/nutritionist shall approve the menu.

9 (b) An adult day program shall offer snacks and fluids to meet the participant's nutritional and fluid needs. The adult
10 day program shall offer a mid-morning and mid-afternoon snack daily to participants. Snacks shall be planned to keep
11 sugar, salt and cholesterol intake to a minimum.

12 (c) An adult day program shall provide a therapeutic diet, if prescribed in writing by a physician, physician's assistant
13 or nurse practitioner for any participant. If therapeutic diets are prepared by program staff, such staff shall have
14 training in planning and preparing therapeutic diets or shall provide documentation of previous training and education
15 sufficient to assure ability to prepare meals in accordance with a physician's prescription.

16 (d) A licensed dietician/nutritionist shall give consultation to the staff on basic and special nutritional needs and
17 proper food handling techniques and the prevention of foodborne illness.

18 (e) An adult day care program shall neither admit nor continue to serve a participant whose dietary requirements
19 cannot be accommodated by the program.

20 (f) An adult day program shall store, prepare and serve meals in a sanitary manner using safe food handling techniques
21 such as those recommended by the United States Department of Agriculture, at the following website:

22 (http://www.fsis.usda.gov/Fact_Sheets/Safe_Food_Handling_Fact_Sheets/index.asp). The food service provider shall
23 abide by the food safety and sanitation practices required by the Commission for Public Health rules applying to adult
24 day care facilities, including any subsequent amendments or additions, which are incorporated by reference. Copies
25 of the rules may be found at the following website: (~~<http://www.doh.enr.state.nc.us/ehs/images/rules/t15a-18a-33.pdf>~~
26 <https://ehs.ncpublichealth.com/docs/rules/294306-14-3300.pdf>).
27

28 *History Note: Authority G.S. 131D-6; 143B-153;*

29 *Eff. July 1, 1978;*

30 *Amended Eff. February 1, 2008; July 1, 2007; March 1, 1992; October 1, 1981; January 1,*
31 *~~1981-1981;~~*

32 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0503

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 5, what are “routine” and “emergency” procedures?

If the intent of the second sentence in (a) is to define “emergency” procedures, then state that on line 6.

On line 6, what are “escort issues”?

In (b), lines 7-8, why do you need any of the language after “shall be met”?

In (b)(4), line 14, this is not the proper way to remove a comma. Please use the language as you published it in the NC Register, which is formatted correctly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0503 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0503 TRANSPORTATION**

4 (a) For programs providing or arranging for public transportation, the adult day care program shall have a
5 transportation policy that includes routine and emergency procedures. Accidents, medical emergencies, weather
6 emergencies and escort issues shall be addressed.

7 (b) When the adult day care program provides transportation, the following requirements shall be met to ensure the
8 health and safety of the participants:

- 9 (1) Each person transported shall have a seat in the vehicle.
- 10 (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to
11 have a rest stop.
- 12 (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be
13 instructed to use seatbelts while being transported.
- 14 (4) Vehicles shall be equipped with a first aid kit, ~~consisting of the items listed in 10A NCAC 06S .0301~~
15 ~~(a),~~ and a fire extinguisher.
- 16 (5) A copy of the transportation policy shall be located in the vehicle used for transport.

17
18 *History Note: Authority G.S. 131D-6; 143B-153;*
19 *Eff. July 1, 1978;*
20 *Amended Eff. January 1, 1981;*
21 *Temporary Amendment Eff. October 1, 2001;*
22 *Amended Eff. February 1, 2008; July 1, 2007; August 1, ~~2002~~, 2002;*
23 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0504

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, capitalize "Office of the State Fire Marshal"

On line 5, please incorporate these Codes by reference if you have not already done so in another Rule in the Subchapter.

In (b), line 7, define "emergencies"

On line 7, delete or define "prominently"

Line 8, what do you mean by "knowledgeable"? Have read it or know about it?

End (b)(2), line 10, with a period, not a semicolon.

On line 11, you are changing "quarterly" to "monthly" If you are changing this in response to a comment, please let me know. In addition, if the change is because you are requiring monthly, rather than quarterly, fire drills, then you need to only change the requirement for fire drills by creating a separate sentence and leave the rest as quarterly.

On line 11, define "medical emergencies"

In (c), line 13, you are requiring quarterly fire drills, and that contradicts line 11 Which frequency is correct?

In (d), so that I'm clear – a staff member is "physically able" unless certified as not by a health care practitioner? And the "physically able" refers to being able to be trained, not to being able to provide first aid or CPR?

Line 17, what is "standard" first aid? Is this a known term to your regulated public?

On line 19, what do you mean by "indicating" Do you mean "stating"? If so, state that.

In (d)(1), line 22, this is not the proper way to remove a comma. Please use the properly formatted language that was published in the Register.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

In (e), line 28, available to whom? Participants? Staff? Volunteers? Visitors?

In (f), line 29, define "basic"

On line 29, replace "which" with "that"

On line 30, shouldn't "clients" be "participants" to conform with the remainder of the rules?

In (f)(1), line 31, the phone number of what? The physician or the hospital?

In (g), Page 2, line 2, insert a comma after "participants"

Line 3, replace "such attention" with "it"

On lines 3 and 5, what is "as soon as possible"? Is this standard entirely decided by the program? If so, it's fine as written. But if you have standards of what this means, then you need to state it within the Rule.

Lines 6-7, why is the county DSS getting this? What are they doing with it?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0504 is readopted with changes as published in 33:17 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0504 EMERGENCIES AND FIRST AID**

4 (a) A fire safety and evacuation plan, approved by the office of the fire marshal or its designee, shall be prepared and
5 maintained by each adult day care program in compliance with the North Carolina State Building Code and Fire
6 Prevention Code.

7 (b) Plan for Emergencies. A written plan for handling emergencies shall be established and displayed prominently
8 in the facility. All staff shall be knowledgeable about the plan. The plan shall:

9 (1) relate to medical and non-medical emergencies; and

10 (2) ~~specify~~ specify responsibilities of each staff member in an emergency;

11 Quarterly ~~Monthly~~ drills in handling emergencies, such as medical emergencies, natural disasters, fires, and facility
12 security shall be conducted. These drills shall be documented including the date and kind of emergency.

13 (c) Evacuation Plan. An evacuation plan shall be posted in each room and fire drills shall be conducted quarterly by
14 programs with a fire safety sprinkler system and monthly by programs without a fire safety sprinkler system. A record
15 shall be kept of dates and time required to evacuate the facility.

16 (d) All physically able staff who ~~have~~ will provide direct participant care ~~contact with participants~~ shall complete
17 certified training in standard first aid and cardio-pulmonary resuscitation (CPR). If a staff member is determined to
18 be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse
19 practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and
20 CPR training shall be:

21 (1) taught by an instructor certified through the American Heart Association, American Red Cross,
22 National Safety Council, or American Safety and Health Institute, ~~or Emergency Medical Services;~~

23 (2) current, as determined by the organization conducting the training and issuing the certification; and

24 (3) documented on an official attendance card issued by the organization certifying the training, or
25 documented by the attendance course roster, in which case the roster shall be signed by the
26 instructor, indicate pass or fail for each student, indicate the length of time the training is valid, and
27 be accompanied by a copy of the instructor's certification.

28 (e) The program shall arrange for medical assistance to be available in the event of an emergency.

29 (f) The program shall have a portable basic emergency information file which includes electronic files available on
30 each client that includes:

31 (1) hospital preference, physician of record and telephone number;

32 (2) emergency contact (family or caregiver);

33 (3) insurance information;

34 (4) medications and allergies;

35 (5) current diagnosis and history; and

36 (6) advance directives, if any.

1 (g) Adult day care staff shall report actions taken in case of sickness and all incidents resulting in physical injury or
2 suspected physical injury, including incidents involving missing participants to the program director. The adult day
3 care staff shall make sure that all persons needing medical attention receive such attention as soon as possible. The
4 person taking emergency action shall notify the family or responsible party of the participant involved and other
5 program staff shall be notified of emergency action taken as soon as possible. The program director shall compile and
6 keep on record a report of all emergency actions taken. A copy of the report shall be sent to the county department of
7 social services within 72 hours of the incident.

8
9 *History Note: Authority G.S. 131D-6; 143B-153;*

10 *Eff. July 1, 1978;*

11 *Amended Eff. July 1, 2007; July 1, 1990; January 1, ~~1981~~. 1981;*

12 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0506

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, shouldn't this read "adult day care program"?

Also, how are the services supervised?

In (b), is this 6 hours per day or per week?

In (c), line 7, you are only requiring "supervision" five days a week, not provision of services. This contradicts (a), which requires supervision at all times. How does this work?

On line 8, "designated" by whom?

On lines 8 and 11, what are "emergency situations"? Who determines this?

On line 8, delete "for" before "hazardous"

On line 9, delete "for" before "vacations."

On line 9, this is not the correct way to delete the comma after "vacations," and insert a period. Use the properly formatted language you published in the NC Register.

On lines 9-11, why is the county DSS being contacted?

On line 10, this not the proper way to make "late" lowercase. Use the properly formatted language you published in the NC Register.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0506 is readopted as published in 33:17 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0506 HOURS AND DAYS OF OPERATION**

4 (a) Supervision of adult day program participants and adult day care program services shall be provided throughout
5 all hours participants are present at the program.

6 (b) The program shall operate for a minimum of six hours.

7 (c) Day care programs shall provide supervision of participants and program activities at least five days per week,
8 except that a facility may be closed for designated holidays, for hazardous weather conditions, emergency situations,
9 and for vacations, ~~and for other reasons as agreed by the director and the county department of social services. The~~
10 county department of social services shall be notified of late openings or early closures ~~may be scheduled~~ on days
11 when hazardous weather conditions exist or when emergency situations arise.

12
13 *History Note: Authority G.S. 131D-6; 143B-153;*

14 *Eff. July 1, 1978;*

15 *Amended Eff. July 1, 2007; March 1, ~~1992~~, 1992;*

16 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0508

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 5, what is a “locked file”? Is this a file cabinet, or do you mean something for locking an electronic file?

In (a)(1)(A) through (H), consider beginning these with articles.

In (a)(1)(F), line 14, what do you mean by “responsible”?

And so that I’m clear - it will not list the responsible party?

In (a)(1)(G), line 16, upon request of whom?

What does (a)(1)(H) mean? Who will determine if this may impact the care plan?

In (a)(2), line 20, what is “confidential information”?

In (a)(3), line 25, will this be different from the individual listed in (a)(1)(G)?

And who will determine if the participant needs emergency care?

In (a)(4)(A) through (F), please begin these with articles like “any” or “the”

In (a)(4)(C), line 33, what is “direct supervision”? I note “direct participant care” is defined in Rule .0201, but this term is not. Do you mean something different here?

In (a)(5), line 37, Rule .0501(b)(2) refers to a service plan, not assessment forms.

In (a)(6), Page 2, line 1, replace “which” with “that”

Line 2, what are “other interested parties”?

On line 2, what is “any other information”? Who determines if it needs to be included?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 5, 2019

In (a)(8), line 6, state “his or her”

In (a)(9), line 11, when will this be applicable?

In (b), line 14, should this be “adult day care programs”?

In (b)(1), line 15, what are “activity schedules”?

In (b)(8)(A) through (H), consider beginning these with articles.

In (b)(8)B), line 24, capitalize “State” assuming you mean “NC”

On line 24, what is “direct care”?

In (b)(11), Page 3, what is this? What are the contents of this form? In order to comply with the APA, the contents of forms must be in Rule or law. Where are the contents of this form located? And how does one get a copy?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0508 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0508 RECORDS**

4 (a) Individual Participant Records. Each adult day care program shall maintain records to document the progress of
5 each participant and to document program operation. These records shall be kept in a locked file. An individual folder
6 for each participant shall be established and maintained and include the following:

- 7 (1) a signed application recording:
- 8 (A) participant's full name;
 - 9 (B) address and telephone number;
 - 10 (C) date of birth, marital status and living arrangement of participant;
 - 11 (D) time of day participant will arrive and time of day participant will leave the program;
 - 12 (E) travel arrangements to and from the program for the participant;
 - 13 (F) name, address and telephone number of at least two family members or friends who are
 - 14 responsible for the participant and can be contacted in emergencies;
 - 15 (G) name, address and telephone number of a licensed medical service provider who will see
 - 16 the participant on request; and
 - 17 (H) personal concerns and knowledge of the caregiver that may have an impact on the
 - 18 participant's care plan.
- 19 (2) copies of all current and former signed authorizations for the day care program to receive and give
- 20 out confidential information on the participant. The current authorization shall include the name of
- 21 the party from whom information is requested and to whom information is given. The current
- 22 authorization shall be dated within the prior 12 months and obtained each time a request for
- 23 participant information is made.
- 24 (3) a signed authorization for the participant to receive emergency medical care from any licensed
- 25 medical practitioner, if emergency care is needed by the participant;
- 26 (4) a medical examination report conducted within three months before enrollment and updated
- 27 annually, signed by a licensed physician, physician's assistant or nurse practitioner. The report shall
- 28 include information on:
- 29 (A) current diseases and chronic conditions and the degree to which these diseases and
 - 30 conditions require observation by day care staff, and restriction of normal activities by the
 - 31 participant;
 - 32 (B) presence and degree of psychiatric problems;
 - 33 (C) amount of direct supervision the participant requires;
 - 34 (D) any limitations on physical activities;
 - 35 (E) listing of all medications with dosages and times medications are to be administered; and
 - 36 (F) most recent date participant was seen by doctor.
- 37 (5) assessment forms as identified in Rule .0501(a)(2) and (b)(1) and (b)(2) of this Section.

- 1 (6) progress notes which are the written report of staff discussions, conferences, consultation with
2 family or other interested parties, evaluation of a participant's progress and any other information
3 regarding a participant's situation.
- 4 (7) service plans for the participant, including scheduled days of attendance, for the preceding 12
5 months.
- 6 (8) a signed authorization if the participant or his responsible party will permit photographs, video,
7 audio recordings or slides of the participant to be made by the day care program, whether for medical
8 documentation, publicity, or any other purpose. The authorization shall specify how and where such
9 photographs, videos, audio recordings or slides will be used, and shall be obtained prior to taking
10 any photographs, videos, audio recordings or slides of the participant.
- 11 (9) a statement signed by the participant, a family member or other responsible party (when applicable)
12 acknowledging receipt of the program policies and agreeing to uphold program policies pertaining
13 to the participant.
- 14 (b) The adult day program shall keep the following program records a minimum of six years:
 - 15 (1) copies of activity schedules;
 - 16 (2) monthly records of expenses and income, including fees collected, and fees to be collected;
 - 17 (3) all bills, receipts and other information which document expenses and income;
 - 18 (4) a daily record of attendance of participants by name;
 - 19 (5) accident reports;
 - 20 (6) a record of staff absences, annual leave and sick leave, including dates and names of substitutes;
 - 21 (7) reports on emergency and fire drills;
 - 22 (8) individual personnel records on all staff members including:
 - 23 (A) application for employment;
 - 24 (B) evidence of a state criminal history check on each employee providing direct care;
 - 25 (C) job description;
 - 26 (D) medical certification of absence of a health condition that would pose a risk to others;
 - 27 (E) written note or report on any personnel action taken with the employee;
 - 28 (F) written report of annual employee review;
 - 29 (G) CPR and first aid training documentation; and
 - 30 (H) signed statement to keep all participant information confidential.
 - 31 (9) a copy of all written policies, including:
 - 32 (A) program policies;
 - 33 (B) personnel policies;
 - 34 (C) agreements or contracts with other agencies or individuals;
 - 35 (D) plan for emergencies; and
 - 36 (E) evacuation plan;
 - 37 (10) program evaluation reports; and

1 (11) control file of DSS-5027 (SIS Client Entry Form) for all participants for whom Social Services
2 Block Grant (Title XX) reimbursement is claimed.

3

4 *History Note:* *Authority G.S. 131D-6; 143B-153;*

5 *Eff. July 1, 1978;*

6 *Amended Eff. February 1, 2008; July 1, 2007; March 1, 1992; July 1, 1990; January 1, ~~1981~~, 1981;*

7 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0509

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 4, state “for an annual internal evaluation...”

On line 6, replace “which” with “that”

Why do you need (b)? You’ve already stated the review is conducted annually. Is this to allow the evaluation to be conducted more often?

In (c), line 8, who determines “the extent considered appropriate”? Based upon what?

Consider beginning (c)(1) through (5) with articles.

End (c)(1) through (5) with semicolons, not commas.

So that I’m clear – the responsible parties or caregivers will not be involved, only family members?

In (c)(6), which department of social services? And why are they involved?

In (d), line 15, why do you need the language “in addition to any others the program may wish to address”? I suggest deleting it. If you need to retain permissive language, insert “at least” before “the following three areas”

In (d)(3), define “efficient and effective”

On line 19, define “cost-effective” How is this determined? Based upon what?

In (e), line 20, state “... kept on file, pursuant to Rule .0509(b)(10) of this Section.”

Add G.S. 131D-6 to your History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0509 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0509 PROGRAM EVALUATION**

4 (a) Each day care program shall have in writing a plan for internal evaluation of its operation and services. The plan
5 shall include the timetable for initiating and completing the annual evaluation, the parties to be involved, the areas
6 which will be addressed and the methods to be used in conducting the evaluation.

7 (b) A formal evaluation shall be conducted at regular intervals, at least annually.

8 (c) The following parties shall be involved, to the extent considered appropriate, in the evaluation process:

- 9 (1) governing body,
10 (2) program director,
11 (3) staff,
12 (4) participants,
13 (5) families of participants,
14 (6) department of social services.

15 (d) Evaluation shall focus on the following three areas, in addition to any others the program may wish to address:

- 16 (1) the extent to which the program is achieving its goals;
17 (2) the extent to which the program is meeting the needs and interests of participants; and
18 (3) the extent to which the program is efficient and effective in its operation, including the extent to
19 which the program is cost-efficient.

20 (e) A written report of the program evaluation and findings shall be made and kept on file.

21
22 *History Note: Authority G.S. 143B-153;*

23 *Eff. July 1, 1978;*

24 *Amended Eff. January 1, ~~1981~~ 1981;*

25 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0601

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a) and throughout this Rule, what is your authority to involve the county DSS in certification?

In (b), line 10, what are the contents of these forms? Where can they be obtained?

On line 10, this is not the correct way to replace the form name. Use the language you published in the NC Register, which was correctly formatted.

In (c), line 11, why do you say "State" at all? If you need to retain it, this is not correctly formatted. Use the formatting published in the Register.

In (c)(4), (6), (7), and (8) what are these forms? What is the "equivalent"?

In (c)(6), line 20, (c)(7), line 24, and (c)(8), line 27, what is "indicating approval"?

In (c)(8), lines 26-27, what is a "local sanitarian"?

In (c)(11), line 33, what is a "proprietary program"?

In (c)(12), line 37, define "normally"

In (c)(13), Page 2, do not recite Rule 0504(d). Just refer to it.

In (c)(14), this mirrors the language in Rule .0305(a)(3) but does not match it. Why is it different?

If you need to retain it, on line 17, what is "direct contact"?

On line 18, the term is "Office" (singular)

In (c)(15), what are the contents of this form? Where is it obtained?

On line 20, what program are you referring to?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

Are you saying the county DSS must fill this out, and that the adult day care program fills out the other forms listed in Paragraph (c)?

In (d), I recommend leading the sentence with the fact that this Paragraph applies to renewals.

Was the change on line 21 made pursuant to public comment?

On line 22, why are you saying "State" here?

On line 22, replace "which" with "that"

In (d)(1) through (3), what are these forms, what are the contents, and what are the "equivalent" here?

In (d)(2), line 28, what is a "structural building modification"?

In (d)(6), Page 3, what are the contents of this form? How are they obtained?

In (d)(7), do not recite Rule .0504(d). Just refer to it.

In (d)(8), do not recite all of Subparagraph (c)(14). Refer to it.

In (d)(9), what are the contents of this form? And if the county DSS is filling it out, then does that mean the adult day care program fills out the rest?

In (e), how will the Division decide to make a visit? Is it to ensure compliance with G.S. 131D-6(b2) for renewals? But what about for the initial review?

On line 32 why do you have the term "State" here?

In (f), line 34, why are you adding "State"?

On line 35, why is the county DSS involved?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 06R .0601 is readopted with changes as published in 33:17 NCR 1753-1761 as follows:

2
3 **SECTION .0600 – CERTIFICATION PROCEDURE**
4

5 **10A NCAC 06R .0601 PROCEDURE**

6 (a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by
7 G.S. 131D-6 shall apply for a certificate to the county department of social services in the county where the program
8 is to be operated.

9 (b) A social worker shall provide technical assistance and shall conduct a study of the program using the State Division
10 of Aging and Adult Services Form DAAS-1500 or DAASS-6205.

11 (c) The county of social services shall submit the initial certification package to the State Division of Aging and Adult
12 Services. The materials and forms to be included in the package are:

- 13 (1) program policies;
- 14 (2) organizational diagram;
- 15 (3) job descriptions;
- 16 (4) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources
17 available to carry out the program of service for a 12 month period;
- 18 (5) a floor plan of the facility showing measurements, restrooms and planned use of space;
- 19 (6) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire
20 inspector, indicating approval of the facility, no more than 30 days prior to submission with the
21 certification package;
- 22 (7) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building
23 Inspection Form for Adult Day Care Homes), or the equivalent completed and signed by the local
24 building inspector indicating approval of the facility, no more than 30 days prior to submission with
25 the certification package;
- 26 (8) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local
27 sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the
28 certification package;
- 29 (9) written notice and the effective date if a variance of local zoning ordinances has been made in order
30 for property to be utilized for an adult day care program;
- 31 (10) a copy of the articles of incorporation, bylaws and names and addresses of board members for adult
32 day care programs sponsored by a non-profit corporation;
- 33 (11) the name and mailing address of the owner if a proprietary program;
- 34 (12) a written medical statement from a physician, nurse practitioner or a physician's assistant, completed
35 within the 12 months prior to submission of the certification package, for each proposed staff
36 member certifying absence of a health condition that would pose a risk to others and that the
37 employee can perform the duties normally assigned on the job;

- 1 (13) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each
2 proposed staff member who is physically able and who will ~~have~~ provide direct participant care
3 ~~contact with participants~~. If a staff member is determined to be physically unable to complete this
4 training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to
5 such shall be provided indicating the time limit of such physical inability. The first aid and CPR
6 training shall be:
- 7 (A) taught by an instructor certified through the American Heart Association, American Red
8 Cross, National Safety Council, or American Safety and Health Institute; ~~or Emergency~~
9 ~~Medical Services~~;
- 10 (B) current, as determined by the organization conducting the training and issuing the
11 certification; and
- 12 (C) documented on an official attendance card issued by the organization certifying the
13 training, or documented by the attendance course roster, in which case the roster shall be
14 signed by the instructor, indicate pass or fail for each student, indicate the length of time
15 the training is valid and be accompanied by a copy of the instructor's certification;
- 16 (14) evidence of the completion of a statewide criminal history records search for the past five years for
17 the program owner and each proposed staff member having direct contact with participants,
18 conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
- 19 (15) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted by the county
20 department of social services with a copy to the program.
- 21 (d) No more than **60** days prior to the end of the current period of certification, the county department of social
22 services shall submit to the State Division of Aging and Adult Services the following forms and materials which make
23 up a certification package for the renewal of a certification.
- 24 (1) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire
25 inspector, indicating approval of the facility, dated no more than 12 months prior to submission with
26 the certification package;
- 27 (2) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building
28 Inspection Form for Adult Day Care Homes), or the equivalent when structural building
29 modifications have been made during the previous 12 months, completed and signed by the local
30 building inspector indicating approval of the facility, within 30 days following completion of the
31 structural building modifications;
- 32 (3) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local
33 environmental health specialist, indicating approval of the facility, no more than 12 months prior to
34 submission with the certification package;
- 35 (4) a written medical statement from a physician, nurse practitioner or physician's assistant for each
36 staff member hired subsequent to the previous certification or recertification expiration date,

- certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
- (5) an updated copy of the program policies, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (7) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will ~~have~~ provide direct participant care ~~contact with participants~~. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, or American Safety and Health Institute; ~~or Emergency Medical Services;~~
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented by an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by the instructor's certification.
 - (8) Evidence of the completion of a statewide criminal history records search for the past five years for each staff member hired subsequent to the previous certification or recertification expiration date having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
 - (9) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the county department of social services to the Division of Aging and Adult Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.
- (e) Following review of the certification package, a pre-certification visit may be made by staff of the State Division of Aging and Adult Services.
- (f) Within 14 business days, the State Division of Aging and Adult Services shall provide written notification to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

1 *History Note:* *Authority G.S. 131D-6; 143B-153;*
2 *Eff. January 1, 1986;*
3 *Amended Eff. September 1, 2007; July 1, 2007; July 1, 2000; May 1, 1992; July 1, ~~1990~~.1990;*
4 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0801

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 6, replace “will” with “shall”

On line 6, delete “in the division’s judgement” as it is both ambiguous and unnecessary.

On line 7, why do you need “minimum”? Can’t you just state “the requirements”?

On line 7, consider replacing “must” with “shall”

On line 8, define “conspicuously” and “public place”

In (b), line 9, consider replacing “will” with “shall”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0801 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **SECTION .0800 - CERTIFICATION INFORMATION**
4

5 **10A NCAC 06R .0801 THE CERTIFICATE**

6 (a) The certificate will be issued by the Division of Aging and Adult Services when, in the division's judgment,
7 minimum requirements for certification have been met under the rules of this Subchapter. The certificate must be
8 conspicuously posted in a public place in the facility.

9 (b) The certificate will be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or
10 involuntarily terminated, or changed to provisional certification status.

11
12 *History Note: Authority G.S. 131D-6; 143B-153;*

13 *Eff. January 1, 1986;*

14 *Amended Eff. July 1, ~~2000~~.2000;*

15 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0802

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 4, since the provisional certificates “may” be issued if (a)(1) through (3) occurs, under what circumstances when (a)(1) through (3) occurs will the Division not issue a provisional certificate? You need to state that here. Or, if you will always issue provisional certificates, replace “may” with “shall”

In (a), line 4, state “A provisional ... issued by the Division of Aging and Adult Services when:” and the delete this duplicative language on lines 5, 9, and 13.

In (a)(1), line 6, and elsewhere the term is used, what is a “plan for corrective action”? Is it what is anticipated in Rule .0102?

On lines 7, 11, and 14, what is “timely”?

On lines 7, 11, and 14, capitalize “Division”

Does (a)(2) apply to renewals, as well? If so, why isn’t that stated, when it is stated in (a)(1) and (3)?

In (a)(3), lines 15-16, how does this work with the time limit in (b)?

In (b), consider stating “A provisional certificate shall not be effective for more than six months.”

In (c), line 18, consider replacing “must” with “shall”

On line 19, are you saying the notice from the Division will identify the reasons for the provisional certificate? If so, I think you can reword this to be clearer. If not, then I don’t know what you mean here.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0802 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0802 PROVISIONAL CERTIFICATE**

4 (a) A provisional certificate may be issued in accordance with the following:

5 (1) A provisional certificate may be issued by the Division of Aging and Adult Services when the
6 certification renewal process identifies violations and a plan for corrective action is in place. The
7 provisional certification will continue until timely corrections have been made and the division so
8 informed, or until revoked.

9 (2) A provisional certificate may be issued by the Division of Aging and Adult Services when corrective
10 action has not been completed by the completion date established in a corrective action plan. The
11 provisional certification will continue until timely corrections have been made and the division so
12 informed, or until revoked.

13 (3) A provisional certificate may be issued by the Division of Aging and Adult Services when renewal
14 materials have not been submitted in a timely fashion, but were received by the division prior to the
15 expiration date of the current period of certification. The provisional certificate will remain in place
16 until revoked or until replaced with full certification.

17 (b) In no instance will a provisional certificate be in effect for longer than six months.

18 (c) When a provisional certificate is issued, the program must post a copy of the notice from the Division of Aging
19 and Adult Services, identifying the reasons for it, adjacent to the current certificate.

20
21 *History Note: Authority G.S. 131D-6; 143B-153;*
22 *Eff. January 1, 1986;*
23 *Amended Eff. July 1, 2000; July 1, ~~1990~~.*
24 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0804

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 4, do you mean “shall” instead of “may”? If not, then when will you not deny or revoke if the rules are violated?

In (b), this applies only to initial denials. What governs denied renewals?

In (b), line 7, replace “will” with “shall”

On line 8, replace “such action will” with “the denial shall”

In (b), lines 8-9, and (c), line 12, what does this language do? If you are imposing a 20-day stay, I note this conflicts with the 60-day timeline to request an appeal in Rule .0806(b) and the provision for staying that decision once a request is received in .0806(c). That means you can say the decision is effective on day 20, but receive the appeal request on day 59, and have to reinstate them?

In (c), simplify this language by using the same language you used in (b).

In (d), line 13, capitalize “Division”

On line 14, do you mean “shall”? If not, when will the Division not immediately revoke when it finds health, safety, or welfare of the participants will be affected?

In (e), line 19, when will it be appropriate here? Who decides that?

On line 19, won't the notice state why it was issued? Why aren't the program directors just telling the individuals what the notice said?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0804 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0804 DENIAL OR REVOCATION OF CERTIFICATE**

4 (a) A certificate may be denied or revoked by the Division of Aging and Adult Services at any time for failure to
5 comply with the rules of this Subchapter.

6 (b) When a program fails to comply with the rules of this Subchapter at the time initial certification is requested,
7 certification will be denied by the Division of Aging and Adult Services. A notice setting forth the particular reasons
8 for such action will be delivered personally or by certified mail to the applicant. Such denial becomes effective 20
9 days after the receipt of the notice.

10 (c) Revocation of a certificate, when violations have not been corrected by the date established by a corrective action
11 plan, may be effected by personal delivery or certified mail, of a notice setting forth the particular reasons for such
12 action. Such revocation becomes effective 20 days after the receipt of the notice.

13 (d) In accordance with 150B-3(c), if the division finds that the health, safety, or welfare of the participants requires
14 emergency action and incorporates this finding in its notice, the certificate may be summarily suspended. Notice of
15 the summary suspension shall be effected by serving the program director by personal delivery or certified mail. The
16 summary suspension will be effective on the date specified in the notice or upon service of the notice, whichever is
17 later.

18 (e) When a program receives a notice of denial or revocation, the program director must inform each participant and
19 participant caretaker, as appropriate, of the notice and the basis on which it was issued.

20
21 *History Note: Authority G.S. 131D-6; 143B-153;*
22 *Eff. January 1, 1986;*
23 *Amended Eff. July 1, 2000; July 1, ~~1990~~, 1990:*
24 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0806

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

In (a), line 4, define “negative action”

Line 5, capitalize “Division”

On line 5, is this informal review what is contemplated by G.S. 150B-22?

On line 5, not satisfactory to whom?

In (b), lines 6-8, you do not need this information. Further, that is not the OAH mailing address. Delete it.

In (d), delete everything after the rule citation on line 14. And update the citation as “26 NCAC Q3 .0103.”

In (e), I suggest deleting all of this as either repetitive or ambiguous, as the contested case procedures in 10A NCAC 01 expired May 2017.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0806 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0806 PROCEDURE FOR APPEAL**

4 (a) When the program is notified by the Division of Aging and Adult Services of a negative action, the program may
5 ask for an informal review by division staff. If the review is not satisfactory, the program may request a hearing.

6 (b) The program may request a hearing within 60 days after receipt of written notification from the division of a
7 negative action, by written notice through registered or certified mail to the Office of Administrative Hearings, 424
8 ~~North Blount Street~~ 1724 New Hope Church Road, Raleigh, NC 27604-9. In addition, at any time before the hearing,
9 the Division of Aging and Adult Services may rescind the notice of negative action upon being satisfied that the
10 reasons for such action have been corrected.

11 (c) Except as provided for in Rule .0804(d) of this Subchapter, upon receipt of a request for a hearing, the enforcement
12 of the negative action shall be suspended pending final agency decision.

13 (d) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S.
14 150B-23 and 26 NCAC 3 .0103. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered
15 agent for service of process for the Department of Health and Human Services. A list of registered agents may be
16 obtained from the Office of Legislative and Legal Affairs.

17 (e) Procedures for the processing of an appeal of an adverse certification action and for the final decision are specified
18 in G.S. 150B, Article 3 and 10A NCAC 01.

19
20 *History Note: Authority G.S. 131D-6; 143B-153;*

21 *Eff. January 1, 1986;*

22 *Amended Eff. July 1, 2000; March 1, 1992; July 1, ~~1990~~, 1990;*

23 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0902

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 1, please give the correct publication information – 33:17 NCR.

On lines 4-6, use 1.5 line spacing.

Line 4, why is “Day Care Centers” capitalized?

On line 4, “assure” how? Don’t you mean they will write these policies and establish these procedures?

On line 6, never use the word “should” in Rule. Use “shall” if you need it here.

Why not rewrite this to state “In addition to the applicable policies and procedures established by this Subchapter, adult day care centers that provide special care services shall write policies and establish procerus that address:”

It seems that in Items (1) through (12), you are reciting parts of G.S. 131D-6(b1). Do you need to do that here?

In (1), I know some of this is statutory language, but you need to replace “which” with “that” on lines 7 and 8.

Lines 8-9, delete “but not be limited to”

In (1)(a), line 10, define “safe, secure, familiar and consistent environment”

On line 10, what do you mean by “encourages”?

In (1)(c), line 14, what do you mean by “stress”?

On line 15, what is the “highest possible level” and who decides this?

In (1)(d), line 16, replace “which” with “that”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

Line 17, define “appropriate”

In (4), line 21, and (11), Page 2, line 1, only family, not caregivers?

In (5), line 24, why do you need the word “specific”?

On line 24, smoking is a danger? And what does “ingestion” mean?

In (7), line 27, how is the ratio decided? Is it solely up to the facility? Will the ratio in Rule .0305 apply?

In (9)(a), line 35, delete “N.C.” as it is duplicative of “State”

On line 35, insert an “and” after “devices;”

In (9)(b), who will create this system and decide it is adequate? The facility?

In (11), Page 2, line 1, who will decide when this is applicable?

In (12), what does this mean?

In the History Note, why are you citing to the Session Law? Isn’t the relevant codified in G.S. 131D-6? Either cite to a specific portion of the Session Law or delete it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 10A NCAC 06R .0902 is readopted as published in 17:33 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0902 POLICIES AND PROCEDURES**

4 Adult Day Care Centers shall assure that written special care services policies and procedures are established,
5 implemented by staff and available for review within the center. In addition to all applicable policies and procedures
6 for adult day care centers, there should be policies and procedures that address:

7 (1) The philosophy of the special care service which includes a statement of mission and objectives
8 regarding the specific population to be served by the center which shall address, but not be limited
9 to, the following:

10 (a) a safe, secure, familiar and consistent environment that maintains and encourages the use
11 of skills for daily living;

12 (b) a structured program of daily activities that allows for flexibility to respond to the needs,
13 abilities, and preferences of participants;

14 (c) individualized service plans that stress the maintenance of participant's abilities and
15 promote the highest possible level of physical and mental functioning; and

16 (d) methods of behavior management which preserve dignity through design of the physical
17 environment, physical exercise, social activity, appropriate medication administration,
18 proper nutrition and health maintenance.

19 (2) The process and criteria for enrollment in and discharge from the service.

20 (3) A description of the special care services offered by the center.

21 (4) Participant assessment and service planning, including opportunity for family involvement in the
22 service planning and the implementation of the service plan, including responding to changes in the
23 participant's condition.

24 (5) Safety measures addressing specific dangers such as wandering, ingestion, falls, smoking, and
25 aggressive behavior.

26 (6) Lost or missing participants.

27 (7) Staff to participant ratios in the special care service to meet the needs of participants.

28 (8) Amount and content areas of staff training both at orientation and annually based on the special care
29 needs of the participants.

30 (9) Physical environment and design features that address the needs of the participants. These features
31 can encompass an entire center if the center promotes itself as providing special care or any section
32 separated by closed doors from the rest of the center and advertised especially for special care of
33 participants.

34 (a) Center or section exit doors may be locked only if the locking devices meet the
35 requirements outlined in the N.C. State Building Code for special locking devices;

36 (b) Where exit doors are not locked, a system of security monitoring shall be provided.

37 (10) Activities based on personal preferences and needs of the participants that focus on the individual's
38 interests and abilities.

- 1 (11) Opportunity for involvement of families in participant care, if applicable.
- 2 (12) The availability of or information on family support groups and other community services.
- 3 (13) Additional costs and fees to the participant for the special services provided.
- 4

5 *History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334;*
6 *Temporary Adoption Eff. September 28, 1999;*
7 *Eff. July 17, ~~2000-2000~~;*
8 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06R .0904

DEADLINE FOR RECEIPT: Friday, June 14, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, what do you mean by "assure"?

In (1), line 7, replace "individual" with "participant" assuming that is what you mean.

In (2), line 10, is this medical examination report required by Rule .0501(a)(3)? If so, state that.

In (3), line 15, what is "standard" here? Does your regulated public know?

On lines 16-17, how does this agreement work? Does it have to be documented?

In the History Note, why are you citing to the Session Law? Isn't the relevant codified in G.S. 131D-6? Either cite to a specific portion of the Session Law or delete it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 5, 2019

1 10A NCAC 06R .0904 is readopted as published in 33:17 NCR 1753-1761 as follows:

2
3 **10A NCAC 06R .0904 ENROLLMENT – SPECIAL CARE SERVICES**

4 In addition to meeting enrollment policies and procedures requirements in Rule .0501(a) of this Subchapter, an adult
5 day care center or home shall assure the following requirements are met for participants who are enrolled for special
6 care services:

- 7 (1) Disclosure information shall be provided to an individual or the responsible party of an individual
8 seeking enrollment in a center or home providing special care services. The disclosure information
9 shall be written and address policies and procedures listed in Rule .0902 of this Subchapter.
- 10 (2) The participant's medical examination report shall specify a diagnosis, disability or condition
11 consistent with the special care service offered by the program.
- 12 ~~(3) Any individual with a developmental disability being considered for adult day services~~
13 ~~programming enrollment or discharge must proceed through the Developmental Disabilities Single~~
14 ~~Portal of Entry and Exit process pursuant to G.S. 122C 132.1 and 10A NCAC 29D .0200.~~
- 15 (4)(3) A participant transferring from standard day care services to special care services must meet the
16 criteria for that special care service. Family or responsible persons shall agree to the transfer
17 decision.

18
19 *History Note: Authority G.S. 131D-6; 143B-153; S.L. 1999-334;*
20 *Eff. July 17, 2000; 2000;*
21 *Readopted Eff. July 1, 2019.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: All Rules in Subchapters 06S and 06T

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

These Rules are readoptions of rules that establish requirements for adult day health services. As authority for these Rules, the agency cites to G.S. 143B-153 and 131D-6. (In some rules, the agency cites to both; in other rules, it cites to one or the other.)

Staff does not believe that either law grants the agency authority to promulgate these Rules. G.S. 143B-153 is the general grant of rulemaking authority for the Commission. Staff acknowledges that it contains several provisions for rulemaking, but it does not appear to govern this program. Further, the only mention of this specific program that staff was able to locate is in G.S. 143B-181.1, which delegates rulemaking authority to the Secretary of DHHS.

Further, G.S. 131D-6 establishes authority for the Social Services Commission to regulate adult day care programs. Those are regulated through the rules in 10A NCAC 06S. Therefore, it appears that this "adult day health services" program is a different program from the adult day care program.

Staff acknowledges that the Commission may have authority to promulgate these Rules, but it does not appear that the agency has cited to that authority in this submission. Therefore, staff recommends objection to all rules in these Subchapters as submitted for lack of statutory authority.

§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.

(a) It is the policy of this State to enable people who would otherwise need full-time care away from their own residences to remain in their residences as long as possible and to enjoy as much independence as possible. One of the programs that permits adults to remain in their residences and with their families is adult day care.

(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. The Department of Health and Human Services shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission.

(b1) An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

- (1) A statement of the overall philosophy and mission of the adult day care program and how it reflects the special needs of participants with dementia.
- (2) The process and criteria for providing or discontinuing special care services.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the participant's condition.
- (4) Staffing ratios and how they meet the participant's need for increased special care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias.
- (7) Frequency and type of participant activities provided.
- (8) Involvement of families in special care and availability of family support programs.
- (9) Additional costs and fees to the participant for special care.

(b2) As part of its certification renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult day care program subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(b3) Nothing in this section shall be construed as prohibiting an adult day care program that does not advertise, market, or otherwise promote itself as providing special care services for persons with Alzheimer's disease or other dementias from providing adult day care services to persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.

(b4) As used in this section, the term "special care service" means a program, service, or activity designed especially for participants with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(c) The Secretary may impose a civil penalty not to exceed one hundred dollars (\$100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c1) Any person, firm, agency, or corporation that harms or willfully neglects a person under its care is guilty of a Class 1 misdemeanor.

(d) The following programs are exempted from the provisions of this section:

- (1) Those that care for three people or less;
- (2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility; [and]
- (3) Those that are required by other statutes to be licensed by the Department of Health and Human Services. (1985, c. 349, s. 1; 1993, c. 539, s. 954; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a); 1998-215, s. 77; 1999-334, s. 2.2; 2001-90, s. 1; 2015-241, s. 12G.3(b).)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission – creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program. [The Commission has the following powers and duties:]

- (1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina.
- (2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
 - b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
 - c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;
 - d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services. The Commission shall establish standardized rates for child caring institutions. In establishing standardized rates, the Commission shall consider the rate-setting recommendations provided by the Office of the State Auditor; and
 - e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision.
- (2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
 - a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
 - b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
 2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
 3. Contracting for and purchasing services; and
 4. Monitoring for effectiveness and compliance with State and federal law and regulations.
- (3) The Social Services Commission shall have the power and duty to establish and adopt standards:
- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
 - b. Repealed by Session Laws 1999-334, s. 3.5, effective October 1, 1999.
 - c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
 - d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
 - e. Repealed by Session Laws 1981, c. 562, s. 7.
 - f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.
- (4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.
- (5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.
- (6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

- (7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.
- (8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:
- a. A fee schedule for the payment of the costs of necessary child care in licensed facilities and registered plans for minor children of needy families.
 - b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
 - c. The payment of an administrative fee not to exceed two hundred dollars (\$200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.
 - d. Child support enforcement services as defined by G.S. 110-130.1.
- (9) The Commission shall adopt rules governing the obligations of counties to contribute financially to regional social services departments in accordance with G.S. 108A-15.3A(e). (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32; 1997-443, s. 11A.118(a); 1997-456, s. 22; 1997-506, s. 55; 1998-202, s. 4(z); 1999-334, s. 3.5; 2000-111, s. 4; 2000-137, s. 4(dd); 2000-140, s. 99(a); 2006-66, s. 10.2(c); 2011-145, s. 19.1(l); 2017-41, s. 4.5; 2017-102, s. 40(e); 2017-186, s. 2(hhhhhh).)

§ 143B-181.1. Division of Aging – creation, powers and duties.

(a) There is hereby created within the office of the Secretary of the Department of Health and Human Services a Division of Aging, which shall have the following functions and duties:

- (1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Health and Human Services for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;
- (2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;
- (3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;
- (4) To serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;
- (5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;
- (6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;
- (7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;
- (8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects;
- (9) To establish or help to establish demonstration programs of services to the aging;
- (10) To establish a fee schedule to cover the cost of providing in-home and community-based services funded by the Division. The fees may vary on the basis of the type of service provided and the ability of the recipient to pay for the service. The fees may be imposed on the recipient of a service unless prohibited by federal law. The local agency shall retain the fee and use it to extend the availability of in-home and community-based services provided by the Division in support of functionally impaired older adults and family caregivers of functionally impaired older adults;
- (11) To administer a Home and Community Care Block Grant for older adults, effective July 1, 1992. The Home and Community Care Block Grant shall be comprised of applicable Older Americans Act funds, Social Services Block Grant funding in support of the Respite Care Program (G.S. 143B-181.10), State funds for home and community care services administered by the Division of Aging, portions of the State In-Home and Adult Day Care funds

(Chapter 1048, 1981 Session Laws) administered by the Division of Social Services which support services to older adults, and other funds appropriated by the General Assembly as part of the Home and Community Care Block Grant. Funding currently administered by the Division of Social Services to be included in the block grant will be based on the expenditures for older adults at a point in time to be mutually determined by the Divisions of Social Services and Aging. The total amount of Older Americans Act funds to be included in the Home and Community Care Block Grant and the matching rates for the block grant shall be established by the Department of Health and Human Services, Division of Aging. Allocations made to counties in support of older adults shall not be less than resources made available for the period July 1, 1990, through June 30, 1991, contingent upon availability of current State and federal funding; and

- (12) To organize, coordinate, and provide staff support to the North Carolina Senior Tar Heel Legislature; [and]
- (13) To develop a strategic State plan for Alzheimer's disease. The plan shall address ways to improve at least all of the following with respect to Alzheimer's disease:
 - a. Statewide awareness and education.
 - b. Early detection and diagnosis.
 - c. Care coordination.
 - d. Quality of care.
 - e. Health care system capacity.
 - f. Training for health care professionals.
 - g. Access to treatment.
 - h. Home- and community-based services.
 - i. Long-term care.
 - j. Caregiver assistance.
 - k. Research.
 - l. Brain health.
 - m. Data collection.
 - n. Public safety and safety-related needs of individuals with Alzheimer's disease.
 - o. Legal protections for individuals living with Alzheimer's disease and their caregivers.
 - p. State policies to assist individuals with Alzheimer's disease and their families.

(b) The Division shall function under the authority of the Department of Health and Human Services and the Secretary of Health and Human Services as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Secretary of Health and Human Services shall adopt rules to implement this Part and Title 42, Chapter 35, of the United States Code, entitled Programs for Older Americans. (1977, c. 242, s. 4; 1981, c. 614, s. 19; 1987, c. 827, s. 244; 1991, c. 52, s. 1; c. 241, s. 1; 1993, c. 503, s. 2; 1997-443, s. 11A.118(a); 2014-100, s. 12D.5.)

1 10A NCAC 06S .0101 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **SUBCHAPTER 06S – ADULT DAY HEALTH STANDARDS FOR CERTIFICATION**

4
5 **SECTION .0100 - INTRODUCTION AND DEFINITIONS**

6
7 **10A NCAC 06S .0101 INTRODUCTORY STATEMENT**

8 Subchapter 06S contains standards for certification of adult day health programs. The standards relate to all aspects
9 of operation of an adult day health program including administration, facility and program operation. In order for
10 payment to be made for adult day health services provided to individuals who are eligible for this service under Title
11 XIX of the Social Security Act, the provider must be certified as meeting these standards. Certification is the
12 responsibility of the adult day health program, the county departments of health and social services and the Department
13 of Health and Human Services, Division of Aging and Adult Services.

14
15 *History Note: Authority G.S. 131D-6;*
16 *Eff. September 1, 1990;*
17 *Amended Eff. July 1, ~~2000-2000~~;*
18 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0102 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0102 DEFINITIONS**

4 (a) Adult day health services is the provision of an organized program of services during the day in a community
5 group setting for the purpose of supporting an adult's personal independence, and promoting his social, physical, and
6 emotional well-being. Services must include health care services as defined in Rule .0403(a) of this Subchapter and
7 a variety of program activities designed to meet the individual needs and interests of the participants, and referral to
8 and assistance in using appropriate community resources. Also included are food and food services to provide a
9 nutritional meal and snacks as appropriate to the program. Transportation to and from the service facility is an optional
10 service that may be provided by the day health program.

11 (b) The community group setting is:

- 12 (1) a day health center, which is a program operated in a structure other than a single family dwelling;
13 or
14 (2) a day health home, which is a program operated in a single family dwelling limited to 16 adults; or
15 (3) a day health program in a multi-use facility, which is a day health center established in a building
16 which is used at the same time for other activities; or
17 (4) a combination program, which is a program offering both adult day care and adult day health
18 services.

19 (c) In addition to Paragraphs (a) and (b) of this Rule, the definitions of terms set forth in 10A NCAC 06R .0200 shall
20 apply.

21
22 *History Note: Authority G.S. 131D-6; 143B-153;*
23 *Eff. September 1, 1990;*
24 *Temporary Amendment Eff. October 1, 2001;*
25 *Amended Eff. July 1, 2007; August 1, ~~2002-2002~~;*
26 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0203 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0203 STAFFING PATTERN**

4 (a) The staffing pattern in day health centers and homes shall be dependent upon the enrollment criteria and the
5 particular needs of the participants who are to be served.

6 (b) There shall be a minimum of one full-time equivalent staff position with responsibility for direct participant care
7 for each five participants. In combination programs, there shall be a minimum of one full-time equivalent staff
8 position with responsibility for direct participant care for each six participants.

9 (c) Substitutes shall be used to maintain the staff-participant ratio and to assure supervision of the delivery of the
10 health care services whenever regularly scheduled staff are absent.

11
12 *History Note: Authority G.S. 131D-6; 143B-153;*

13 *Eff. September 1, 1990;*

14 *Amended Eff. July 1, ~~2007~~2007;*

15 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0204 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0204 STAFF REQUIREMENTS**

4 (a) Standards as set forth in 10A NCAC 06R .0305(a), (b) and (d) shall be met by adult day health programs.

5 (b) The program director for adult day health programs with a capacity of 10 or fewer participants may also serve as
6 the health care coordinator provided that the individual meets all the requirements set forth in 10A NCAC 06R
7 .0305(b) and in Paragraph (c) of this Rule and if requirements in Rule .0203 of this Section related to program capacity
8 are met. If requirements of 10A NCAC 06R .0305(b) and Paragraph (c) of this Rule are met, and the capacity is
9 greater than 10 participants, the program director may serve as the substitute health care coordinator for up to but not
10 exceeding three consecutive weeks.

11 (c) Health Care Coordinator of Adult Day Health Programs:

12 (1) Adult day health programs shall have a health care coordinator to coordinate the delivery of health
13 care services and participate in direct care as specified in Subparagraph (c)(2) of this Rule. The
14 health care coordinator shall be on-site a minimum of four hours per day and any additional hours
15 necessary to meet the requirements for the provision of health care services as set forth in this
16 Subchapter.

17 (2) The nursing responsibilities of the health care coordinator, consistent with the Nursing Practice Act,
18 include:

19 (A) completing preadmission health assessment for initial acceptance into program, including
20 problem-identification and care planning;

21 (B) implementing the health care components of the established service plan which include
22 medication administration, wound care, enteral or parenteral feedings, bowel or bladder
23 training and maintenance programs, tracheotomy care and suctioning, and delegating
24 nursing care tasks to unlicensed personnel;

25 (C) monitoring participant's response to medical treatment plan and nursing interventions and
26 revising plan of care as necessary;

27 (D) reporting and recording results of the nursing assessment, care rendered and participant's
28 response to care;

29 (E) collaborating with other health care professionals and caregivers regarding provision of
30 participant's health care;

31 (F) educating other staff members to emergency procedures and providing information to staff
32 and caregivers about health concerns and conditions of participants;

33 (G) providing first aid treatment as needed; and

34 (H) making certain health and personal care services as outlined in 10A NCAC 06S .0403 are
35 provided to participants consistent with the participant's service plans.

36 (3) The health care coordinator:

- (A) shall be either a registered nurse or a licensed practical nurse licensed to practice in North Carolina;
- (B) if the health care coordinator is a licensed practical nurse, supervision shall be provided by a registered nurse consistent with the Nursing Practice Act G.S. 90-171 and 21 NCAC 36 .0224 through .0225. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, telephone (919) 733-2678/431-3000, ~~at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and twenty five cents (\$.25) for each additional page,~~ or are available at the following website: <http://reports.oah.state.nc.us/ncac.asp>. The licensed practical nurse shall also receive on-site supervision by a registered nurse as needed, or at minimum, every two weeks.
- (C) shall have knowledge and understanding of the physical and emotional aspects of aging, the resultant diseases and infirmities, and related medications and rehabilitative measures;
- (D) shall be at least 18 years of age;
- (E) shall present, prior to beginning employment, a written medical statement completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and ability to perform the duties assigned on the job; and
- (F) shall provide at least three reference letters or the names of individuals with whom a reference interview may be conducted, including at least one former employer. The individuals providing reference information shall have knowledge of the applicant coordinator's background and qualifications.

(d) Staff Responsible for Personal Care in Adult Day Health Programs. All day health program staff providing personal care shall present evidence of meeting the following qualifications prior to assuming such responsibilities:

- (1) successful completion of nurse's aide, home health aide or equivalent training course, or
- (2) a minimum of one year of experience in caring for impaired adults.

History Note: Authority G.S. 131D-6; 143B-153;
Eff. September 1, 1990;
Amended Eff. September 1, 2007; July 1, 2007; May 1, ~~1992-1992~~;
Readopted Eff. July 1, 2019.

1 10A NCAC 06S .0301 is readopted with changes as published in 33:17 NCR 1761 as follows:

2
3 **SECTION .0300 - FACILITY REQUIREMENTS FOR CENTERS AND HOMES**

4
5 **10A NCAC 06S .0301 REQUIREMENTS**

6 (a) General requirements governing facilities, construction, equipment and furnishings for adult day care as set forth
7 in 10A NCAC 06R .0400 shall apply to adult day health.

8 (b) Additional facility requirements are as follows:

9 (1) Facility space shall be of sufficient dimension and size to allow for required program group
10 activities. Notwithstanding the space requirements of 10A NCAC 06R .0401:

11 (A) day health centers and day health homes shall provide at least 60 square feet of indoor
12 space excluding hallways, offices and restrooms for each participant;

13 (B) combination programs shall provide at least 50 square feet of indoor space excluding
14 hallways, offices and restrooms for each participant; and

15 (C) day health programs or combination programs which share space with other programs or
16 activities in a multi-use facility shall have a nucleus area separate from other activities in
17 the rest of the building and shall have a fire-resistant rated separation according to the
18 North Carolina Building Code. The nucleus area must provide at least 40 square feet of
19 indoor space per participant excluding hallways, offices and restrooms, and a minimum of
20 20 square feet per participant must be provided in other space in the facility designated for
21 use by the day health program. When the other space is being used at the same time by
22 individuals participating in other services provided in the multi-use facility, the 20 square
23 feet per participant is in addition to any minimum square footage requirement for other use
24 of such space. Shared facility space outside the nucleus area which may be used by the
25 day health program and counted in meeting the 20 square feet per participant requirement
26 includes craft, therapy and other activity areas. Dining space may be included if also used
27 for activities. Offices, restrooms, hallways, kitchens and shared treatment rooms shall not
28 be counted in meeting the 20 square feet per participant requirement. Participation shall
29 be open only to persons enrolled in the program and to visitors on a planned basis.
30 Involvement of day health participants in other activities in the building shall be on planned
31 basis, as a part of the day health program plan, and supervised by a day health staff member.

32 (2) Facilities shall have a minimum of one male and one female accessible toilet in accordance with the
33 North Carolina Accessibility Code. One toilet shall be available for each 12 adults, including staff
34 and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.

35 (3) The facility shall have a minimum of one private office for staff use with equipment and furnishings
36 for administrative purposes and for conferences with individual participants and families.

- (4) The facility shall include a treatment room which is enclosed and private from the rest of the facility. The treatment room shall meet the requirements of the North Carolina State Building Code. The treatment room shall have a sink or have a door-way that connects it to a room containing a sink. The room shall contain a treatment table or bed with a waterproof mattress cover that will serve as a treatment table, storage cabinet for first aid and medical supplies and equipment, table or desk and two chairs. The storage cabinet shall be kept locked.
- (5) The treatment room shall provide a means of insuring the privacy of the person on the treatment table.
- (6) The treatment room shall have the following medical supplies and equipment:
- (A) first aid supplies consisting of absorbent compress, adhesive bandages, adhesive tape, antiseptic, burn treatment, medical exam gloves, sterile pads and triangular bandage;
 - (B) fever thermometer;
 - (C) blood pressure cuff;
 - (D) stethoscope;
 - (E) medical scales, or scales that can be calibrated;
 - (F) emesis basin ~~pail or bag~~;
 - ~~(G)~~ ~~toilet hat~~;
 - ~~(G)~~~~(H)~~ bed pan;
 - ~~(H)~~~~(I)~~ urinal; and
 - ~~(I)~~~~(J)~~ wash basin.

History Note: Authority G.S. 131D-6; 143B-153;
Eff. September 1, 1990;
Amended Eff. July 1, 2007.
Readopted Eff. July 1, 2019.

1 10A NCAC 06S .0302 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0302 CONSTRUCTION REQUIREMENTS FOR DAY HEALTH HOMES**

4 Standards as set forth in 10A NCAC 06R .0700 shall be met.

5
6 *History Note: Authority G.S. 131D-6;*
7 *Eff. September 1, ~~1990~~1990;*
8 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0402 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0402 ADDITIONAL ENROLLMENT AND PARTICIPATION REQUIREMENTS**

4 (a) Adult day health programs may serve persons 18 years of age or older who need day health services in order to
5 support their independence and who require one or more of the following during the hours of the day health program:

- 6 (1) Monitoring of a medical condition; or
7 (2) Provision of assistance with or supervision of activities of daily living; or
8 (3) Administration of medication, special feedings or provision of other treatment or services related to
9 health care needs.

10 (b) Day health programs shall not enroll or continue to serve persons whose needs exceed the capability of the
11 program.

12 (c) Each individual's service plan, in addition to the requirements set forth in 10A NCAC 06R .0501, shall include
13 the health needs and the goals for meeting the health needs of the individual.

14
15 *History Note: Authority G.S. 131D-6; 143B-153;*
16 *Eff. September 1, 1990;*
17 *Amended Eff. July 1, 2007; March 1, ~~1992-1992~~;*
18 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0403 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0403 HEALTH AND PERSONAL CARE SERVICES**

4 (a) In adult day health programs, the following health care and personal care services shall be provided:

- 5 (1) assistance with activities of daily living including feeding, ambulation, or toileting as needed by
6 individual participants;
- 7 (2) health care monitoring of each participant's general health and medical regimen. This includes
8 documenting the periodic assessment of the vital signs, weight, dental health, general nutrition, and
9 hygiene of each participant. When health changes occur, positive or negative, the adult day care
10 program staff shall notify the family, caretaker or responsible party of the changes. The change in
11 health status and notification shall be recorded in the participant's file;
- 12 (3) assistance to participants and caregivers with medical treatment plans, diets, and referrals as needed;
- 13 (4) health education programs for all participants on a regular basis, at least monthly, and health care
14 counseling tailored to meet the needs of participants and caregivers; and
- 15 (5) first aid treatment as needed.

16 (b) Specialized services, e.g. speech therapy, physical therapy, and counseling, shall be facilitated by the adult day
17 health program as ordered by a physician and as available through community resources.

18
19 *History Note: Authority G.S. 131D-6; 143B-153;*
20 *Eff. September 1, 1990;*
21 *Amended Eff. July 1, 2007; March 1, ~~1992~~1992;*
22 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0404 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0404 TRANSPORTATION**

4 Standards as set forth in 10A NCAC 06R .0503 shall be met by adult day health programs.

5
6 *History Note: Authority G.S. 131D-6; 143B-153;*

7 *Eff. September 1, 1990;*

8 *Temporary Amendment Eff. October 1, 2001;*

9 *Amended Eff. July 1, 2007; August 1, ~~2002, 2002~~;*

10 *Readopted Eff. July 1, 2019*

1 10A NCAC 06S .0405 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0405 EMERGENCIES AND FIRST AID**

4 Standards as set forth in 10A NCAC 06R .0504 shall be met by adult day health programs.

5
6 *History Note: Authority G.S. 131D-6; 143B-153;*

7 *Eff. September 1, 1990;*

8 *Amended Eff. July 1, ~~2007-2007~~;*

9 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0501 is readopted with changes as published in 17:33 NCR 1761-1762 as follows:

2
3 **SECTION .0500 - CERTIFICATION INFORMATION**
4

5 **10A NCAC 06S .0501 PROCEDURE**

6 (a) All individuals, groups or organizations operating or wishing to operate an adult day health program as defined
7 by G.S. 131D-6 must apply for a certificate to the county department of social services in the county where the program
8 is to be operated.

9 (b) A designated social worker will supply necessary forms and standards for certification and will make a study of
10 the program.

11 (c) The following forms and materials make up an initial certification package and must be submitted through the
12 county department of social services to the state Division of Aging and Adult Services:

- 13 (1) The program policy statement;
- 14 (2) Organizational diagram;
- 15 (3) Job descriptions;
- 16 (4) Documentation showing planned expenditures and resources available to carry out the program of
17 service for a 12 month period;
- 18 (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
- 19 (6) Form ~~DSSDOA~~-1498 (Fire Inspection Report) or the equivalent completed and signed by the local
20 fire inspector, indicating approval of the facility, no more than 30 days prior to submission with the
21 certification package;
- 22 (7) Form ~~DSSDOA~~-1499 (Building Inspection Report for Day Care Services for Adults) or the
23 equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if
24 a building inspector is not available, indicating approval of the facility, no more than 30 days prior
25 to submission with the certification package;
- 26 (8) Form ~~DSSDENR-2386-4054~~ (Sanitation Evaluation Report) or the equivalent completed and signed
27 by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission
28 with the certification package;
- 29 (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order
30 for property to be utilized for an adult day health program;
- 31 (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult
32 day health programs sponsored by a non-profit corporation;
- 33 (11) The name and mailing address of the owner if a proprietary program;
- 34 (12) A medical statement of each proposed staff member certifying to freedom from communicable
35 disease or condition and to good health signed by a licensed physician, physician assistant or nurse
36 practitioner no more than 30 days prior to submission with the certification package. When such
37 certification cannot be made, employment may commence, continue, terminate, or be reassigned

1 based on an assessment on whether the employee's work tasks would pose a significant risk to the
2 health of the employee, co-workers or the public, or whether the employee is unable to perform the
3 normally assigned job duties; and

- 4 (13) ~~DSSDAAS~~-6205 (Adult Day Health Certification Report). This form must be submitted by the
5 county department of social services with a copy to the program.

6 (d) The following forms and materials make up a certification package for the renewal of a certification and must be
7 submitted through the county department of social services, no more than ~~60~~90 days prior to the end of the current
8 period of certification, to the state Division of Aging and Adult Services:

- 9 (1) Form ~~DSSDOA~~-1498 (Fire Inspection Report) or the equivalent completed and signed by the local
10 fire inspector, indicating approval of the facility, no more than 12 months prior to submission with
11 the certification package;
- 12 (2) Form ~~DSSDOA~~-1499 (Building Inspection Report for Day Care Services for Adults) or the
13 equivalent when structural building modifications have been made during the previous 12 months,
14 completed and signed by the local building inspector, or fire inspector or fire marshall if a building
15 inspector is not available, indicating approval of the facility, within 30 days following completion
16 of the structural building modifications;
- 17 (3) Form ~~DSSDOA~~-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a
18 local sanitarian, indicating approval of the facility, no more than 12 months prior to submission with
19 the certification package;
- 20 (4) A medical statement for each staff member certifying to freedom from communicable disease or
21 condition and to good health signed by a licensed physician, physician assistant or nurse practitioner
22 no more than 12 months prior to submission with the certification package. When such certification
23 cannot be made, employment may commence, continue, terminate, or be reassigned based on an
24 assessment on whether the employee's work tasks would pose a significant risk to the health of the
25 employee, co-workers or the public, or whether the employee is unable to perform the normally
26 assigned job duties;
- 27 (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and
28 addresses of board members if applicable, and a floor plan showing measurements, restrooms, and
29 planned use of space, if any changes have been made since the previous certification package was
30 submitted;
- 31 (6) Documentation showing planned expenditures and resources available to carry out the program of
32 service for a 12 month period; and
- 33 (7) ~~DSSDAAS~~-6205 (Adult Day Health Certification Report). This form must be submitted with the
34 certification package by the ~~county Department of Social Services~~ department of social services to
35 the Division of Aging and Adult Services at least 30 days in advance of the expiration date of the
36 certificate, with a copy to the program.

1 (e) If during the study of the program it does not appear that all standards can be met, the county department will so
2 inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the
3 application. Upon the applicant's request, the application will be completed and submitted to the Division of Aging
4 and Adult Services for consideration.

5 (f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of
6 Aging and Adult Services.

7 (g) The Division of Aging and Adult Services will promptly notify in writing to the applicant and the county
8 department of social services of the action taken after a review of the certification package and visit, if made.

9
10 *History Note: Authority G.S. 130A-148; 131D-6; 143B-153;*
11 *Eff. May 1, 1992;*
12 *Amended Eff. July 1, 2000; March 1, ~~1993~~, 1993;*
13 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06S .0508 is readopted as published in 17:33 NCR 1761-1762 as follows:

2
3 **10A NCAC 06S .0508 PROCEDURE FOR APPEAL**

4 The requirements in 10A NCAC 06R .0806 shall control for this Subchapter.

5
6 *History Note: Authority G.S. 131D-6; 143B-153;*

7 *Eff. March 1, ~~1992~~, 1992;*

8 *Readopted Eff. July 1, 2019.*

1 10A NCAC 06T .0201 is readopted as published in 33:17 NCR 1762 as follows:

2
3 **SECTION .0200 - STATE ADULT DAY CARE FUND**
4

5 **10A NCAC 06T .0201 NATURE AND PURPOSE OF STATE ADULT DAY CARE FUND**

6 (a) The State Adult Day Care Fund shall be used for adult day care and adult day health services provided through
7 county departments of social services for the purpose of enabling people to remain in or return to their own homes.

8 (b) The fund shall be used to increase state financial participation in the costs of this service.

9 (c) The maximum rate for the purchase of adult day care services under contract shall not exceed thirty-three dollars
10 and seven cents (\$33.07) per day, per client. The maximum rate for the purchase of adult day health services under
11 contract shall not exceed forty dollars (\$40.00) per day, per client. Adult day health services may only be purchased
12 for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(b)(2)(A) and a
13 determination that the individual needs one or more services delineated in 10A NCAC 06S .0402(a)(1) through (3).

14 (d) The maximum reimbursement rate for transporting an adult day care client to an adult day care program shall not
15 exceed one dollar and fifty cents (\$1.50) for a one-way trip.
16

17 *History Note: Authority G.S. 143B-153;*

18 *Eff. January 1, 1982;*

19 *Temporary Amendment Eff. July 27, 1994 for a period of 180 days or until the permanent rule*
20 *becomes effective, whichever is sooner;*

21 *Amended Eff. December 1, 1994; July 1, 1990;*

22 *Temporary Amendment Eff. December 8, 1997;*

23 *Amended Eff. March 1, 2007; April 1, 2005; April 1, ~~1999~~, 1999;*

24 *Readopted Eff. July 1, 2019.*