

1 10A NCAC 06S .0101 is readopted with changes as published in 33:17 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.~~ programs, which are a type of adult  
9 day care, set forth in 42 USC 3032c, and referenced in G.S. 131D-6.1(a). The standards relate to all aspects of  
10 operation of an adult day health program including administration, ~~facility~~facility, and program operation. In order for  
11 payment to be made for adult day health services provided to individuals who are eligible for this service under Title  
12 XIX of the Social Security Act, the provider must be certified as meeting these standards. Certification ~~is~~ shall be the  
13 responsibility of the adult day health program, the county departments of health and social services in accordance with  
14 G.S. 108A-14(a)(5), and the Department of Health and Human Services, Division of Aging and Adult Services.

15  
16 *History Note:* Authority G.S. 131D-6; 143B-153(2a); 143B-153(6);42 USC 3032c  
17 Eff. September 1, 1990;  
18 Amended Eff. July 1, 2000-2000;  
19 Readopted Eff. November 1, 2019.

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

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

4 (a) ~~Adult~~ Adult day health ~~services is services~~ ” means the provision of an organized program of services during the  
5 day in a community group setting for the purpose of supporting an adult's personal independence, and promoting his  
6 ~~or her~~ social, physical, and emotional well-being. Services ~~must shall~~ include health care services as defined in Rule  
7 .0403(a) of this ~~Subchapter and a variety~~ Subchapter, different types of program activities designed to meet the  
8 individual needs and interests of the participants, and referral to and assistance in using appropriate community  
9 ~~resources. resources to meet the needs of the participant. Also included are~~ This definition includes the provision of  
10 food and food services to provide a nutritional meal and snacks as appropriate to the ~~program.~~ program in accordance  
11 with 10A NCAC 06R .0502. Transportation to and from the service facility ~~is an optional service that~~ may be provided  
12 by the adult day health program.

13 (b) ~~The community~~ “Community group ~~setting is: setting” means:~~

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

21 (c) In addition to Paragraphs (a) and (b) of this Rule, the definitions ~~of terms set forth in~~ 10A NCAC 06R .0200-10A  
22 NCAC 06R .0201 shall apply.

23  
24 *History Note:* Authority G.S. 131D-6; ~~143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;~~  
25 *Eff. September 1, 1990;*  
26 *Temporary Amendment Eff. October 1, 2001;*  
27 *Amended Eff. July 1, 2007; August 1, 2002.2002;*  
28 *Readopted Eff. November 1, 2019.*

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

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

4 (a) The staffing pattern in adult day health centers and homes shall be dependent upon the enrollment criteria number  
5 of enrolled participants and the particular needs of the participants who are to be served. participants, in accordance  
6 with 10A NCAC 06R .0501.

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

10 (c) ~~Substitutes~~ Substitute staff in accordance with 10A NCAC 06R .0305 shall be used to maintain the staff-participant  
11 ratio and to assure supervision of the delivery of the adult health care services whenever regularly scheduled staff are  
12 absent.

13

14 *History Note:* Authority G.S. 131D-6; 143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;

15 *Eff. September 1, 1990;*

16 *Amended Eff. July 1, 2007-2007;*

17 *Readopted Eff. November 1, 2019.*

1 10A NCAC 06S .0204 is readopted with changes as published in 33:17 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)(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)-10A NCAC 06R .0305(d)~~, and in Paragraph (c) of this ~~Rule Rule~~, and if requirements in Rule .0203 of this  
8 ~~Section related to program capacity are met.~~ Section. If requirements of ~~10A NCAC 06R .0305(b)-10A NCAC 06R~~  
9 ~~.0305(d)~~ and Paragraph (c) of this Rule are met, and the capacity is greater than 10 participants, the program director  
10 may serve as the substitute health care coordinator for up to but not exceeding no more than 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 to satisfy the  
16 participants' service plans as set forth in this Subchapter.

17 (2) The nursing responsibilities of the health care coordinator, consistent with the Nursing Practice Act,  
18 G.S. 90-171.19, shall include:

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

21 (B) implementing the health care components of the established service plan which that 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 a participant's response to a medical treatment plan and nursing interventions  
26 and revising a participant's service plan of care as necessary;

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

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

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

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

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

36 (3) The health care coordinator:

- 1 (A) shall be either a registered nurse or a licensed practical nurse licensed to practice in North  
 2 Carolina;
- 3 (B) if the health care coordinator is a licensed practical nurse, supervision shall be provided by  
 4 a registered nurse consistent with the Nursing Practice Act ~~G.S. 90-171~~ and 21 NCAC 36  
 5 .0224 ~~through and~~ .0225. ~~Copies of these Rules may be obtained from the Office of~~  
 6 ~~Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, telephone~~  
 7 ~~(919) 733-2678[431-3000,] at a cost of two dollars and fifty cents (\$2.50) for up to 10~~  
 8 ~~pages and twenty five cents (\$.25) for each additional page, or [are] available at the~~  
 9 ~~following website: <http://reports.oah.state.nc.us/ncac.asp>. These Rules are hereby~~  
 10 ~~incorporated by reference, including subsequent amendments.~~ The licensed practical nurse  
 11 shall also receive on-site supervision by a registered nurse as ~~needed, determined by the~~  
 12 ~~supervising registered nurse~~ or at minimum every two ~~weeks.~~ ~~weeks:~~
- 13 (C) shall have knowledge and understanding of the physical and emotional aspects of aging,  
 14 the resultant diseases and infirmities, and related medications and rehabilitative measures;
- 15 (D) shall be at least 18 years of age;
- 16 (E) shall present, prior to beginning employment, a written medical statement completed  
 17 within the prior 12 months by a physician, nurse practitioner, or physician's assistant,  
 18 certifying that the employee has no illness or health condition that would pose a risk to  
 19 others and ability to perform the duties assigned on the job; and
- 20 (F) shall provide at least three reference letters or the names of individuals ~~who can be~~  
 21 ~~contacted, with whom a reference interview may be conducted, including at least one~~  
 22 ~~former employer one of which shall include previous employment verification. The~~  
 23 ~~individuals providing reference information shall have knowledge of the applicant health~~  
 24 ~~care coordinator's background and qualifications. The individuals providing reference~~  
 25 ~~information shall have knowledge of the applicant coordinator's background and~~  
 26 ~~qualifications.~~

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

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

32  
 33 *History Note:* Authority G.S. 131D-6; ~~143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;~~  
 34 *Eff. September 1, 1990;*  
 35 *Amended Eff. September 1, 2007; July 1, 2007; May 1, 1992, 1992;*  
 36 *Readopted Eff. ~~November~~ 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  
7 as set forth 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) adult day health centers and adult day health homes shall provide at least 60 square feet of  
12 indoor 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) adult day health programs or combination programs which that share space with other  
16 programs or activities in a multi-use facility shall have a nucleus area separate from other  
17 activities in the rest of the building and shall have a fire-resistant rated separation according  
18 to the North Carolina Building Code. The nucleus area must provide at least 40 square feet  
19 of indoor space per participant excluding hallways, offices, and restrooms, and a  
20 minimum of 20 square feet per participant must be provided in other space in the facility  
21 designated for use by the adult day health program. When the other space is being used at  
22 the same time by individuals participating in other services provided in the multi-use  
23 facility, the 20 square feet per participant is in addition to any minimum square footage  
24 requirement for other use of such space. Shared facility space outside the nucleus area  
25 which that may be used by the adult day health program and counted in meeting the 20  
26 square feet per participant requirement includes craft, therapy, and other activity  
27 areas. Dining space may be included if also used for activities. Offices, restrooms,  
28 hallways, kitchens, and shared treatment rooms shall not be counted in meeting  
29 the 20 square feet per participant requirement. Participation shall be open only to persons  
30 enrolled in the program and to visitors on a planned basis, basis, as referenced in 10A  
31 NCAC 06R .0510. Involvement of adult day health participants in other activities in the  
32 building shall be on planned basis, as a part of the adult day health program plan, and  
33 supervised by an adult day health staff member.

34 (2) Facilities shall have a minimum of one male and one female accessible toilet in accordance with the  
35 North Carolina Accessibility Building Code. One toilet shall be available for each 12 adults,  
36 including staff and participants who utilize the facility. One hand lavatory shall be provided for  
37 each two toilets.

1 (3) The facility shall have a minimum of one private office for staff use with equipment and furnishings  
2 for administrative purposes and for conferences with individual participants and families.

3 (4) The facility shall include a treatment room ~~which~~ ~~that~~ is enclosed and private from the rest of the  
4 facility. The treatment room shall meet ~~the requirements of~~ the North Carolina State Building Code.  
5 The treatment room shall have a sink or have a ~~door way~~ ~~doorway~~ that connects it to a room  
6 containing a sink. The room shall contain a treatment table or bed with a waterproof mattress cover  
7 that will serve as a treatment table, storage cabinet for first aid and medical supplies and equipment,  
8 table or ~~desk~~ ~~desk~~, and two chairs. The storage cabinet shall be kept locked.

9 (5) The treatment room shall provide a means of ~~insuring~~ ~~ensuring~~ the privacy of the person on the  
10 treatment table.

11 (6) The treatment room shall have the following medical supplies and equipment:

12 (A) first aid supplies consisting of absorbent compress, adhesive bandages, adhesive tape,  
13 antiseptic, burn treatment, medical exam gloves, sterile ~~pads~~ ~~pads~~, and triangular bandage;

14 (B) fever thermometer;

15 (C) blood pressure cuff;

16 (D) stethoscope;

17 (E) medical scales, or scales that can be calibrated;

18 (F) emesis ~~basin~~ ~~pail~~ or bag;

19 ~~(G)~~ ~~[toilet hat;]~~

20 ~~(G)~~ ~~(H)~~ bed pan;

21 ~~(H)~~ ~~(I)~~ urinal; and

22 ~~(I)~~ ~~(J)~~ wash basin.

24 *History Note:* Authority G.S. 131D-6; ~~143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;~~

25 *Eff. September 1, 1990;*

26 *Amended Eff. July 1, 2007.*

27 *Readopted Eff. ~~November~~ ~~1,~~ 2019.*

1 10A NCAC 06S .0302 is readopted with changes as published in 33:17 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.~~The adult day health facility shall meet the standards set  
5 forth in 10A NCAC 06R .0700.

6

7 *History Note:* Authority G.S. 131D-6; 143B-153(2a); 143B-153(6); 42 USC 3032c;

8 Eff. September 1, 1990-1990;

9 Readopted Eff. November 1, 2019.

1 10A NCAC 06S .0402 is readopted with changes as published in 33:17 NCR 1761-1762 as follows:

2  
3 **10A NCAC 06S .0402 ADDITIONAL ENROLLMENT AND PARTICIPATION REQUIREMENTS**

4 (a) Adult day health programs ~~may~~ shall serve persons 18 years of age or older who need adult day health services in  
5 order to support their independence and who require one or more of the following during the hours of the adult day  
6 health program:

- 7 (1) Monitoring of a medical condition; ~~or~~  
8 (2) Provision of assistance with or supervision of activities of daily living; or  
9 (3) Administration of medication, special ~~feedings~~ feedings, or provision of other treatment or services  
10 related to health care needs. For the purpose of this Rule, "special feedings" shall mean the enteral  
11 or parenteral nutrition provided through a tube in the nose or stomach or through the veins  
12 intravenously.

13 (b) ~~Day~~Adult day health programs shall not enroll or continue to serve persons whose needs exceed the capability of  
14 the ~~program.~~program in accordance with 10A NCAC 06R .0501.

15 (c) Each ~~individual's~~ participant's written service plan, in addition to the requirements set forth in 10A NCAC 06R  
16 .0501, shall include the health needs and the goals for meeting the health needs of the ~~individual.~~participant.

17  
18 *History Note:* Authority G.S. 131D-6; ~~143B-153;~~ 143B-153(2a); 143B-153(6); 42 USC 3032c;  
19 Eff. September 1, 1990;  
20 Amended Eff. July 1, 2007; March 1, ~~1992-1992;~~  
21 Readopted Eff. November 1, 2019.

1 10A NCAC 06S .0403 is readopted with changes as published in 33:17 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 shall~~  
8 include documenting the ~~periodic~~ assessment of the vital signs, weight, dental health, general  
9 nutrition, and hygiene of each ~~participant~~ participant in accordance with 10A NCAC 06R .0501.  
10 ~~When health changes occur, positive or negative, When positive or negative health changes occur,~~  
11 the adult day care program staff shall notify the family, ~~caretaker caretaker,~~ or responsible party of  
12 the changes. The change in health status and notification shall be recorded in the participant's file;

13 (3) assistance to participants and caregivers with medical treatment plans, diets, and referrals as needed;

14 (4) health education programs for all participants on a ~~regular~~ monthly ~~basis, at least monthly,basis,~~  
15 and health care counseling tailored to meet the needs of participants and caregivers; and

16 (5) first aid treatment as needed.

17 (b) Specialized ~~services, e.g. services, such as~~ speech therapy, physical therapy, and counseling, shall be facilitated  
18 by the adult day health program as ordered by a physician and as available through ~~community resources,community~~  
19 services.

20

21 *History Note:* Authority G.S. 131D-6; ~~143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;~~

22 *Eff. September 1, 1990;*

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

24 *Readopted Eff. November 1, 2019.*

1 10A NCAC 06S .0404 is readopted with changes as published in 33:17 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. For adult day health  
5 programs providing or arranging transportation, the standards of 10A NCAC 06R .0503 shall apply.

6

7 *History Note:* Authority G.S. 131D-6; 143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;

8 *Eff. September 1, 1990;*

9 *Temporary Amendment Eff. October 1, 2001;*

10 *Amended Eff. July 1, 2007; August 1, ~~2002-2002~~;*

11 *Readopted Eff. November 1, 2019.*

1 10A NCAC 06S .0405 is readopted as published with changes in 33:17 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. Adult day health programs~~  
5 ~~shall meet the standards set forth in 10A NCAC 06R .0504.~~

6

7 *History Note:* Authority G.S. 131D-6; ~~143B-153; 143B-153(2a); 143B-153(6); 42 USC 3032c;~~

8 *Eff. September 1, 1990;*

9 *Amended Eff. July 1, 2007-2007;*

10 *Readopted Eff. November 1, 2019.*

1 10A NCAC 06S .0501 is readopted with changes as published in 33:17 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~~ shall apply for a certificate to the county department of social services in the county where the  
8 program 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 shall provide technical assistance and shall conduct a study of the program using the Division of Aging~~  
11 ~~and Adult Services form DAAS-6205, as set forth in 10A NCAC 06R .0601(b).~~

12 (c) The ~~following forms and materials make up an~~ county department of social services shall submit the initial  
13 certification package ~~and must be submitted through the county department of social services~~ to the ~~state~~ Division of  
14 Aging and Adult ~~[Services:]~~Services. The materials and forms to be included in the package are:

- 15 (1) ~~The~~ program ~~policy statement;~~policies;
- 16 (2) ~~Organizational~~ organizational diagram;
- 17 (3) ~~Job~~ job descriptions;
- 18 (4) ~~Documentation~~ Form 732a-ADS (Daily Rate Sheet) or the equivalent, as set forth in 10A NCAC  
19 06R .0601(c)(4), showing planned expenditures and resources available to carry out the program of  
20 service for a 12 month period;
- 21 (5) ~~Aa~~ floor plan of the facility showing measurements, restrooms and planned use of space;
- 22 (6) Form ~~DSSDOA~~-1498 (Fire Inspection Report) or the ~~equivalent~~equivalent, as determined by the  
23 local fire inspector, completed and signed by the local fire inspector, indicating approval of the  
24 facility, no more than 30 days prior to submission with the certification package;
- 25 (7) Form ~~DSSDOA~~-1499 (Building Inspection Report for Adult Day Care ~~Services for Adults~~)  
26 Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the  
27 ~~equivalent~~equivalent, as determined by the local building inspector, completed and signed by the  
28 local building inspector, or fire inspector or fire ~~marshall~~marshal, if a building inspector is not  
29 available, indicating approval of the facility, no more than 30 days prior to submission with the  
30 certification package;
- 31 (8) Form ~~DSSDENR-2386-4054~~(~~Sanitation Evaluation Report~~)(Inspection of Adult Day Service  
32 Facility), or the ~~equivalent~~equivalent, as determined by a local registered environmental health  
33 specialist, completed and signed by a local sanitarian, completed and signed by a local registered  
34 environmental health specialist, indicating approval of the facility, no more than 30 days prior to  
35 the submission with the certification package;
- 36 (9) ~~Written~~written notice and the effective ~~date,~~date if a variance of local zoning ordinances has been  
37 made in order for property to be utilized for an adult day health program;

1 (10) ~~A~~ copy of the articles of incorporation, bylaws and names and addresses of board  
2 ~~members, members~~ for adult day health programs sponsored by a non-profit corporation;

3 (11) ~~The~~the name and mailing address of the owner ~~if a proprietary of an adult day health~~ program;

4 (12) ~~A medical statement for each staff member certifying to freedom from communicable disease or~~  
5 ~~condition and to good health signed by a licensed physician, physician assistant or nurse practitioner~~  
6 ~~no more than 12 months prior to submission with the certification package. When such certification~~  
7 ~~cannot be made, employment may commence, continue, terminate, or be reassigned based on an~~  
8 ~~assessment on whether the employee's work tasks would pose a significant risk to the health of the~~  
9 ~~employee, co-workers or the public, or whether the employee is unable to perform the normally~~  
10 ~~assigned job duties; a written medical statement from a physician, nurse practitioner, or a physician's~~  
11 ~~assistant, completed within the 12 months prior to submission of the certification package, for each~~  
12 ~~proposed staff member certifying absence of a health condition that would pose a risk to others and~~  
13 ~~that the employee can perform the duties assigned to him or her on the job;~~

14 (13) ~~verification of standard first aid and cardio-pulmonary resuscitation (CPR) certification for each~~  
15 ~~proposed staff member who is physically able and who will provide direct participant care as defined~~  
16 ~~in 10A NCAC 06R .0201. The requirements of 10A NCAC 06R .0504(d) shall be applicable to this~~  
17 ~~Rule.~~

18 (14) ~~evidence of the completion of a Statewide criminal history records search for the past five years for~~  
19 ~~the adult day health program owner and each proposed staff member who provides direct participant~~  
20 ~~care, conducted by an agency approved by the North Carolina Administrative Office of the Courts;~~  
21 ~~and~~

22 ~~(13)(15)~~ ~~ÐSSDAAS-6205 (Adult Day Health Certification Report).~~ This form must be submitted by the  
23 county department of social services with a copy to the program.

24 (d) ~~The following forms and materials make up a certification package for the renewal of a certification and must be~~  
25 ~~submitted through the county department of social services, no~~ No more than ~~6090~~ days prior to the end of the current  
26 period of ~~certification, to the state Division of Aging [and Adult Services:]~~certification, the county department of  
27 ~~social services shall submit to the Division of Aging and Adult Service the following forms and materials that make~~  
28 ~~up a certification package for the renewal of a certification.~~

29 (1) Form ~~ÐSSDOA-1498 (Fire Inspection Report) or the~~ ~~equivalent~~equivalent, as determined by the  
30 ~~local fire inspector,~~ completed and signed by the local fire inspector, indicating approval of the  
31 facility, no more than 12 months prior to submission with the certification package;

32 (2) Form ~~ÐSSDOA-1499 (Building Inspection Report for~~ ~~Adult~~ Day Care ~~Services for Adults)~~  
33 ~~Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes),~~ or the  
34 ~~equivalent~~equivalent, as determined by the local building inspector, when structural building  
35 modifications have been made during the previous 12 months, completed and signed by the local  
36 building inspector, or fire inspector or fire ~~marshall~~marshal, if a building inspector is not available,

1 indicating approval of the facility, within 30 days following completion of the structural building  
2 modifications;

3 (3) Form ~~DSS[DOA]~~ 2386-DENR-4054 (Sanitation Evaluation Report) or the ~~equivalent~~equivalent, as  
4 ~~determined by a local registered environmental health specialist,~~ completed and signed by a local  
5 ~~sanitarian, registered environmental health specialist,~~ indicating approval of the facility, no more  
6 than 12 months prior to submission with the certification package;

7 (4) ~~A medical statement for each staff member certifying to freedom from communicable disease or~~  
8 ~~condition and to good health signed by a licensed physician, physician assistant or nurse practitioner~~  
9 ~~no more than 12 months prior to submission with the certification package. When such certification~~  
10 ~~cannot be made, employment may commence, continue, terminate, or be reassigned based on an~~  
11 ~~assessment on whether the employee's work tasks would pose a significant risk to the health of the~~  
12 ~~employee, co-workers or the public, or whether the employee is unable to perform the normally~~  
13 ~~assigned job duties;~~ a written medical statement from a ~~physician, nurse practitioner, or physician's~~  
14 ~~assistant for each staff member hired subsequent to the previous certification or recertification~~  
15 ~~expiration date, certifying absence of a health condition that would pose a risk to others and that the~~  
16 ~~employee can perform the duties normally assigned on the job;~~

17 (5) ~~An~~ updated copy of the ~~policy statement, program policies,~~ organizational diagram, job  
18 descriptions, names and addresses of board members if applicable, and a floor plan showing  
19 measurements, restrooms, and planned use of space, if any changes have been made since the  
20 previous certification package was submitted;

21 (6) ~~Documentation~~ Form 732a-ADS (Daily Rate Sheet) or the ~~equivalent~~ showing planned expenditures  
22 and resources available to carry out the program of service for a 12 month period;

23 (7) ~~verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each~~  
24 ~~proposed staff member who is physically able and who will provide direct participant care;~~

25 (8) ~~evidence of the completion of a Statewide criminal history record that complies with Subparagraph~~  
26 ~~(c)(14) of this Rule; and~~

27 (7)(9) ~~DSS~~DAAS-6205 (Adult Day Health Certification Report). This form must be submitted with the  
28 certification package by the ~~county Department of Social Services~~ department of social services to  
29 the Division of Aging ~~and Adult Services~~ at least 30 days in advance of the expiration date of the  
30 certificate, with a copy to the program.

31 (e) If during the study of the program it does not appear that all standards can be met, the county department ~~will se~~  
32 ~~inform~~shall send written notice to the applicant, ~~indicating in writing the reasons, stating the reasons the standards are~~  
33 ~~not met, and shall~~ and give the applicant an opportunity to withdraw the ~~application. application or remedy the defect~~  
34 ~~by the deadline provided by the local department of social services. Upon the applicant's request, the application will~~  
35 ~~be completed and submitted to the Division of Aging [and Adult Services] for consideration.~~

36 (f) Following review of the certification package, a pre-certification visit ~~may~~for certification shall be made by staff  
37 of ~~state~~ Division of Aging ~~and Adult Services.~~

1 (g) The Within 14 business days, the Division of Aging and Adult Services will promptly notify in writing shall provide  
2 written notification to the applicant and the county department of social services and local departments of health of  
3 the action taken after a review of the certification package and visit, if made, visit.  
4

5 *History Note:* Authority G.S. 130A-148; 131D-6; 143B-153(2a); 143B-153(6); 42 USC 3032c;  
6 Eff. May 1, 1992;  
7 Amended Eff. July 1, 2000; March 1, 1993-1993;  
8 Readopted Eff. November 1, 2019.

1 10A NCAC 06S .0508 is readopted with changes as published in 33:17 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~~ apply to this Subchapter.

5

6 *History Note:* Authority G.S. 131D-6; 143B-153(2a); 143B-153(6); 42 USC 3032c;

7 Eff. March 1, 1992; 1992;

8 Readopted Eff. November 1, 2019.

1 10A NCAC 06T .0201 is readopted with changes 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 adult day care fund shall be used for adult day care and adult day health services  
7 provided through county departments of social services for the purpose of enabling people to remain in or return to  
8 their own homes.

9 (b) The fund shall be used to increase state financial participation in the costs of this service.

10 (c) The maximum rate for the purchase of adult day care services under contract shall not exceed thirty-three dollars  
11 and seven cents (\$33.07) per day, per client. The maximum rate for the purchase of adult day health services under  
12 contract shall not exceed forty dollars (\$40.00) per day, per client. Adult day health services may only be purchased  
13 for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(b)(2)(A)  
14 .0204(c)(2)(A) and a determination that the individual needs one or more services delineated set forth in 10A NCAC  
15 06S .0402(a)(1) through (3). 10A NCAC 06S .0402(a).

16 (d) The maximum reimbursement rate for transporting an adult day care client to an adult day care program shall not  
17 exceed one dollar and fifty cents (\$1.50) for a one-way trip.

18  
19 *History Note:* Authority G.S. 143B-153; 143B-153(2a); 143B-153(6); S.L. 1981, c. 1048;

20 *Eff. January 1, 1982;*

21 *Temporary Amendment Eff. July 27, 1994 for a period of 180 days or until the permanent rule*  
22 *becomes effective, whichever is sooner;*

23 *Amended Eff. December 1, 1994; July 1, 1990;*

24 *Temporary Amendment Eff. December 8, 1997;*

25 *Amended Eff. March 1, 2007; April 1, 2005; April 1, ~~1999, 1999~~;*

26 *Readopted Eff. November 1, 2019.*



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

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
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

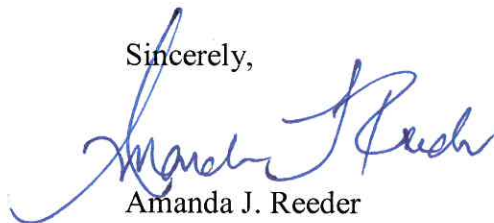
Dear Ms. Penny:

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

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

Rules Division  
919/431-3000  
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Judges and  
Assistants  
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Clerk's Office  
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Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

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

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

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**From:** Penny, Paris <[paris.penny@dhhs.nc.gov](mailto:paris.penny@dhhs.nc.gov)>  
**Sent:** Tuesday, June 11, 2019 10:07 AM  
**To:** May, Amber Cronk <[amber.may@oah.nc.gov](mailto: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](mailto:Paris.Penny@dhhs.nc.gov)

820 S. Boylan Avenue, McBryde Building, Raleigh, NC 27603  
2401 Mail Service Center, Raleigh, NC 27699-2401

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.

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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.

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## RRC STAFF OPINION

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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.*

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**§ 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.

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(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.)

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S and T, all rules submitted

**DEADLINE FOR RECEIPT: Thursday, October 3, 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.*

*In all or most History Notes, you need to add authority to address the RRC's objection, including citing to G.S. 131D-6 and 143B-153(2a) for each Rule.*

*In each History Note, please update the Readopted Eff. date.*

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: September 19, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0101

**DEADLINE FOR RECEIPT: Thursday, October 3, 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 8, since the agency's response to the RRC's objection regarding authority to promulgate these Rule was that adult day health programs are a type of adult day care, state this in the Rule. I suggest stating "This Subchapter contains standards for certification of adult day health programs, which are a type of adult day care as set forth in 42 USC 30302c and referenced in G.S. 131D-6.1(a)."*

*On line 9, is this referring to the operation of both the facility and the program? If so, state "including administration and facility and program operation" and remove the comma after "administration" If you are regulating three things – administration, facility, and program operation, insert a comma after "facility"*

*On line 11, replace "is" with "shall be"*

*What authority are you relying upon in line 12 to assign certification to the county department?*

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: September 19, 2019

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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0102

**DEADLINE FOR RECEIPT: Thursday, October 3, 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: “Adult day health services” means the provision...*

*On line 4, do you need to retain “organized”?*

*On line 5, state “his or her”*

*On lines 5-6, what are “social, physical, and emotional well-being”? Does your regulated public know?*

*On line 6, replace “must” with “shall”*

*Also on line 6, insert a comma after “Subchapter” and delete “and”*

*On line 7, what do you mean by “variety”?*

*On line 8, what are “appropriate” community resources?*

*On line 8, replace “Also included” with “This definition includes the provision of”*

*On line 9, what are these meals and snacks and who determines this?*

*On lines 9-10, why do you need “is an optional service that”? Why not state “Transportation to and from the facility may be provided...”?*

*In (b), line 11, state: “Community group setting” means:”*

*Delete the “or” at the end of (b)(1), line 13 and (b)(2), line 14.*

*In (b)(3), line 16, replace “which” with “that”*

*On line 16, what “other activities”? Is this anything the provider wants, like a church or fitness center?*

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: September 19, 2019

*In (c), line 19, just cite to Rule 10A NCAC 06R .0201.*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0203

**DEADLINE FOR RECEIPT: Thursday, October 3, 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), what does this mean? What are the “enrollment criteria” and “the particular needs”? Who determines this?*

*In (b), generally terms like “minimum” are not favored in rules, as rules set the minimum standards. However, I take it you need to retain the term here?*

*In (c), line 10, delete or define “regularly”*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0204

**DEADLINE FOR RECEIPT: Thursday, October 3, 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, insert a comma after “(b)”*

*In (b), line 7, don't you mean to cross-reference .0305(d)? That Paragraph addresses the Program Director; Paragraph (b) of Rule .0305 addresses establishing personnel policies. Assuming you did mean Paragraph (d), correct the cross-reference on line 8, as well.*

*On line 7, what is “program capacity”? Who determines it?*

*On lines 9 and 10, replace “up to but not exceeding” with “no more than”*

*In (c), line 11, why is “Care Coordinator of Adult Day Health Programs” capitalized?*

*In (c)(1), line 14, I take it you need to retain “a minimum”?*

*On lines 14-15, who will determine what hours are “necessary to meet the requirements”? Is this entirely up to the health care coordinator?*

*In (c)(2), line 17, please insert the citation to the Nursing Practice Act here (it's G.S. 90-171.19) and delete it from (c)(3)(B), Page 2, line 4.*

*On line 18, insert a “shall” before “include:”*

*In (c)(2)(B), line 21, replace “which” with “that”*

*On line 24, I take it any delegation will be one that is allowed by law?*

*In (c)(2)(C), line 25, insert an “a” before “participant's”*

*Line 26, what is the “plan of care” And is the determination of necessity to change it solely in the discretion of the health care coordinator?*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: September 19, 2019

*In (c)(2)(D), line 27, insert a comma after “rendered” and insert “the” before “participant’s”*

*In (c)(2)(E), line 30, insert an “a” before “participant’s”*

*In (c)(2)(F), line 31, replace “to” with “about”*

*On line 32 insert a “the” before “participant’s”*

*In (c)(2)(H), line 34, replace “making certain” with “ensuring”*

*In (c)(3)(B), Page 2, line 5, why are you citing to Rule 21 NCAC 36 .0224? Please note that both rules cited were amended effective January 1, 2019.*

*Please state “These Rules (or this Rule, if you only retain 21 NCAC 36 .0225) are hereby incorporated by reference, including subsequent amendments.” You do not need to provide a url, mailing address, or cost to get them. So, delete lines 5-9.*

*On line 10, who determines what is “as needed”? The LPN?*

*On line 11, change the period after “weeks” to a semicolon.*

*What does (c)(3)(C) mean? Does your regulated public know?*

*In (c)(3)(F), do you want to use the same language as Rule 06R .0305(d)(2)(E)? It says:*

*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.*

*In (d), line 24, what is “personal care”? Is this the same thing as “direct participant care” in Rule .0203? If so, why not use the same term?*

*In (d)(1), line 25, define “successful”*

*Also on line 25, insert a comma after “aide”*

*On line 25, replace the comma after “course” with a semicolon.*

*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: September 19, 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:

- 1 (A) shall be either a registered nurse or a licensed practical nurse licensed to practice in North  
2 Carolina;
- 3 (B) if the health care coordinator is a licensed practical nurse, supervision shall be provided by  
4 a registered nurse consistent with the Nursing Practice Act G.S. 90-171 and 21 NCAC 36  
5 .0224 through .0225. Copies of these Rules may be obtained from the Office of  
6 Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, telephone  
7 (919) ~~733-2678~~431-3000, ~~at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages~~  
8 ~~and twenty five cents (\$.25) for each additional page~~, or are available at the following  
9 website: <http://reports.oah.state.nc.us/ncac.asp>. The licensed practical nurse shall also  
10 receive on-site supervision by a registered nurse as needed, or at minimum, every two  
11 weeks.
- 12 (C) shall have knowledge and understanding of the physical and emotional aspects of aging,  
13 the resultant diseases and infirmities, and related medications and rehabilitative measures;
- 14 (D) shall be at least 18 years of age;
- 15 (E) shall present, prior to beginning employment, a written medical statement completed  
16 within the prior 12 months by a physician, nurse practitioner, or physician's assistant,  
17 certifying that the employee has no illness or health condition that would pose a risk to  
18 others and ability to perform the duties assigned on the job; and
- 19 (F) shall provide at least three reference letters or the names of individuals with whom a  
20 reference interview may be conducted, including at least one former employer. The  
21 individuals providing reference information shall have knowledge of the applicant  
22 coordinator's background and qualifications.

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

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

27  
28 *History Note: Authority G.S. 131D-6; 143B-153;*  
29 *Eff. September 1, 1990;*  
30 *Amended Eff. September 1, 2007; July 1, 2007; May 1, ~~1992-1992~~;*  
31 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0301

**DEADLINE FOR RECEIPT: Thursday, October 3, 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 the Submission for Permanent Rule form, Box 9B, this explanation is only pertaining to a fiscal note. I'm not sure this belongs on the form. If you want to retain it, please be sure to insert the reason for this readoption first.*

*In (b)(1), line 9, what is "sufficient dimension and size"? Who will decide this? Based upon what?*

*In (b)(1)(B), line 14, insert a comma after "offices"*

*In (b)(1)(C), line 15, replace "which" with "that"*

*On line 19, insert a comma after "offices"*

*On line 24, replace "which" with "that"*

*On line 26, insert a comma after "therapy"*

*On line 27, insert a comma after "kitchens"*

*On lines 29 and 30, what is a "planned basis"? Who is planning this?*

*In (b)(2), line 33, this is now the NC Building Code, not Accessibility Code. I do not think you need to reincorporate this outside standard by reference, given that you did so in 06R .0401.*

*In (b)(3), line 35, do you need to retain "minimum" here? And what about "private"?*

*In (b)(4), Page 2, line 1, replace "which" with "that"*

*On line 2, what requirements are you referring to?*

*On line 5, insert a comma after "desk"*

*In (b)(5), line 7, replace "insuring" with "ensure"*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: September 19, 2019

*In (b)(6)(A), line 11, insert a comma after “pads”*

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: September 19, 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.

- 1 (4) The facility shall include a treatment room which is enclosed and private from the rest of the facility.  
2 The treatment room shall meet the requirements of the North Carolina State Building Code. The  
3 treatment room shall have a sink or have a door-way that connects it to a room containing a sink.  
4 The room shall contain a treatment table or bed with a waterproof mattress cover that will serve as  
5 a treatment table, storage cabinet for first aid and medical supplies and equipment, table or desk and  
6 two chairs. The storage cabinet shall be kept locked.
- 7 (5) The treatment room shall provide a means of insuring the privacy of the person on the treatment  
8 table.
- 9 (6) The treatment room shall have the following medical supplies and equipment:
- 10 (A) first aid supplies consisting of absorbent compress, adhesive bandages, adhesive tape,  
11 antiseptic, burn treatment, medical exam gloves, sterile pads and triangular bandage;
  - 12 (B) fever thermometer;
  - 13 (C) blood pressure cuff;
  - 14 (D) stethoscope;
  - 15 (E) medical scales, or scales that can be calibrated;
  - 16 (F) emesis ~~basin-pail or bag~~;
  - 17 ~~(G) toilet hat;~~
  - 18 (G)~~(H)~~ bed pan;
  - 19 (H)~~(I)~~ urinal; and
  - 20 (I)~~(J)~~ wash basin.

21

22 *History Note: Authority G.S. 131D-6; 143B-153;*  
23 *Eff. September 1, 1990;*  
24 *Amended Eff. July 1, 2007.*  
25 *Readopted Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0302

**DEADLINE FOR RECEIPT: Thursday, October 3, 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, state “The standards...” or “The facility shall meet the standards set forth in 10A NCAC 06R .0700.”*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0402

**DEADLINE FOR RECEIPT: Thursday, October 3, 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”? Or is the age allowed to be determined by the individual program, but no younger than 18?*

*In (a)(1), line 6, delete the “or”*

*In (a)(3), line 8, what are “special feedings”? Does your regulated public know?*

*On line 8, insert a comma after “feedings”*

*In (b), who will determine this?*

*In (c), should this read “Each individual’s written service plan” to mirror the language in Rule 06R .0501?*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0403

**DEADLINE FOR RECEIPT: Thursday, October 3, 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)(2), lines 7-8, consider stating “This shall include documenting the ...”*

*On line 8, what is a “periodic assessment”? Does your regulated public know? Who sets these intervals?*

*On line 9, I suggest stating “When positive or negative health changes occur, the adult...”*

*On line 10, please insert a comma after “caretaker”*

*In (a)(4), line 13, what is a “regular basis”? Who determines this? Do you need to retain this language?*

*In (b), replace “e.g.” with “such as”*

*On line 17, what are “community resources”?*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0404

**DEADLINE FOR RECEIPT: Thursday, October 3, 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.*

*Since you state in Rule .0102(a) that transportation is optional, why not parrot some of the language in Rule 06R .0503 and state “For adult day health programs providing or arranging transportation, the standards of 10A NCAC 06R .0503 shall apply.”*

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: September 19, 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*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0405

**DEADLINE FOR RECEIPT: Thursday, October 3, 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.*

*Consider stating “The standards” or “Adult day health programs shall meet the standards set forth in 10A NCAC 06R .0504.”*

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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0501

**DEADLINE FOR RECEIPT: Thursday, October 3, 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.*

*I note that this Rule is extremely similar to Rule 10A NCAC 06R .0601. I recommend you make changes to conform to that language, as that Rule was readopted effective September 1, 2019.*

*In (a), lines 6-7, that statute does not define “adult day health program” and I recommend you either replace this citation with a federal law or cite to Rule .0101.*

*Line 7, replace “must” with “shall”*

*In (b), line 9, who will make this designation?*

*Line 9, define “necessary”*

*Also on line 9, what are the contents of these forms? And what standards are you referring to?*

*In (c), please consider using the simpler, more concise language in 06R .0601(c) instead.*

*On line 12, delete “state”*

*In (c)(4), I believe “12-month” should be hyphenated.*

*In (c)(5), please insert a comma after “restrooms”*

*In (c)(6) through (8), be sure to compare this language to Rule 06R .0601 to ensure the language matches.*

*In (c)(9), line 29, delete the comma after “date”*

*In (c)(10), line 31, insert a comma after “bylaws”*

*In (c)(11), to conform with Rule 06R .0601, should this state “The name and mailing address of the owner of an adult day health program;”?*

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: September 19, 2019

*In (c)(12), should this language conform to Rule 06R .0601?*

*If not:*

*Line 35, insert a comma after “assistant”*

*Line 37, who “may” do this?*

*Page 2, line 1, define “significant risk”*

*Line 3, what is “normally”? Who will decide this?*

*In (c)(13), since the contents of this form are set forth in Rule 06R .0601, you do not need to restate them here; however, you do need to cross-reference Paragraph (b) of that Rule.*

*In (d), I suggest using the language from 06R .0601(d) and review that language for all Subparagraphs to ensure the language matches.*

*In (d)(4), if you do not change the language to mirror 06R .0601(d), please note the queries for Subparagraph (c)(12).*

*In (d)(6), line 32, please hyphenate “12-month”*

*In (e), Page 3, line 1, who will conduct this study to determine whether the standards “can be” met?*

*On line 1, delete “so”*

*On line 2, replace “indicating” with “stating”*

*Or, consider stating “... the county department shall send written notice to the applicant, stating the reasons that the standards are not met, and shall give...”*

*On line 3, consider replacing “will” with “shall”*

*In (f), line 5, do you mean “shall” instead of “may”? (See Rule 06R .0601(e))*

*In (g), line 7, replace “will” with “shall” and define “promptly”*

*Line 8, if you replace “may” with “shall” in (f), be sure to delete “if made.”*

*In the History Note, why are you citing to G.S. 130A-148?*

*Also in the History Note, I suggest at least citing to the laws cited to in Rule 06R .0601.*

*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: September 19, 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 **6090** 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  
35 to 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06S .0508

**DEADLINE FOR RECEIPT: Thursday, October 3, 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.*

*Consider stating, "The requirements in 10A NCAC 06R .0806 shall apply to 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: September 19, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Social Services Commission

RULE CITATION: 10A NCAC 06T .0201

**DEADLINE FOR RECEIPT: Thursday, October 3, 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:

*Since this rule addresses adult day care services, doesn't this repeat the rules in Subchapter 06Q? Why do you need to set the rate both places? What controls if the rules differ? Is there a reason you can't just cite to 10A NCAC 06Q .0201 and then only retain the language in (c), lines 11-13?*

*What is the purpose of Paragraph (a)?*

*Assuming you need to retain it, in (a), line 6, why is "Adult Day Care Fund" capitalized?*

*What is the purpose of Paragraph (b)?*

*In (c), line 12, this cross-reference does not exist. Do you mean "(c)(2)(A)"?*

*Line 13, please replace "delineated" with "set forth"*

*Also on line 13, why not just state "10A NCAC 06S .0402(a)"?*

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: September 19, 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

**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.*