



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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December 21, 2012

Nadine Pfeiffer  
2714 Mail Service Center  
Raleigh, NC 27699-2714

Re: 10A NCAC 13D .2105, .2210, .2301

Dear Ms. Pfeiffer:

At its December 20<sup>th</sup>, meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to rule .2105 based on ambiguity. The rule is unclear in (b) in how many residents may be accepted at a facility "other than a continuing care retirement community."

In the first sentence in lines 8 and 9 the rule specifies that the facility cannot accept more residents than the total number for which it is licensed, "except in an emergency situation." This implies that in an emergency situation it could accept more residents than the "total number for which it is licensed."

Yet the next sentence, lines 11 and 12, specifically states that even "[e]mergency authorizations ... shall not exceed the total number of beds licensed by the Division." This would indicate that a facility cannot accept more residents, even in an emergency, than it is licensed for.

The Commission objected to rules .2210 and .2301 based on a lack of statutory authority. There is no authority cited, and none known, for the provisions in .2210(b) and (d) to require an administrator to meet certain qualifications, as set out in the definitions rule, to perform certain tasks. There is no authority cited, and none known, for the provision in .2301(c) requiring "an interdisciplinary team" to have a registered nurse.

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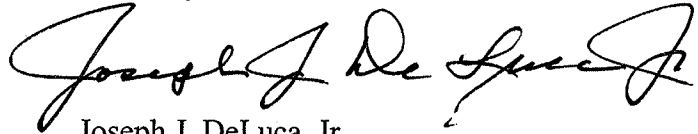
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Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph J. DeLuca, Jr.", written in a cursive style.

Joseph J. DeLuca, Jr.  
Commission Counsel

JJD:jbe

1 10A NCAC 13D .2105 is amended as published in NCR 27:03, PP. 310-320, as follows:

2

3 **10A NCAC 13D .2105 TEMPORARY CHANGE IN BED CAPACITY**

4 (a) A ~~life-care center,~~ continuing care retirement community, having an agreement to care for all residents  
5 regardless of level of care needs, may temporarily increase bed capacity by 10 percent or 10 beds, whichever is less,  
6 over the licensed bed capacity for a period up to ~~30~~ 60 days following notification of and approval by the  
7 ~~Department.~~ Nursing Home Licensure and Certification Section.

8 (b) A facility other than a ~~life-care center~~ continuing care retirement community shall accept no more ~~patients or~~  
9 residents than the total number for which it is licensed except in an emergency situation. ~~situation approved and~~  
10 ~~confirmed in writing by the Licensure and Certification Section of the Division of Health Service Regulation.~~  
11 Emergency authorizations shall not exceed ~~30~~ 60 calendar days and shall not exceed the total ~~licensed bed capacity~~  
12 ~~for the facility.~~ number of beds licensed by the Division.

13 (c) The Department shall authorize, in writing, a temporary increase in licensed beds in accordance with Paragraphs  
14 (a) and (b) of this Rule, if it is determined that:

- 15 (1) the increase is not associated with a capital expenditure; and  
16 (2) the increase would not jeopardize the health, safety and welfare of the patients.

17

18 *History Note: Authority G.S. 131E-104; 131E-112;*

19 *Eff. January 1, 1996. 1996;*

20 *Amended Eff. January 1, 2013.*

1 10A NCAC 13D .2210 is amended as published in NCR 27:03, PP. 310-320, as follows:

2  
3 **10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR**  
4 **MISAPPROPRIATION**

5 (a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property,  
6 including orientation and instruction of facility staff on patients' rights, and the screening of and requesting of  
7 references for all prospective employees.

8 (b) The administrator shall ensure that the Health Care Personnel Registry Section of the Division of Health Service  
9 Regulation is notified within ~~24 hours~~ one working day of the health care facility becoming aware of all allegations  
10 against health care personnel as defined in G.S. 131E-256(a)(1), which includes abuse, neglect, misappropriation of  
11 resident property, misappropriation of the property of the facility, diversion of drugs belonging to a health care  
12 facility or a resident, fraud against a health care facility or a resident, and injuries of unknown source in accordance  
13 with 42 CFR subsection 483.13 which is incorporated by reference.

14 (c) The facility shall investigate allegations of patient abuse, patient neglect, or misappropriation of patient property  
15 ~~in accordance with 42 CFR subsection 483.13 which is incorporated by reference, including subsequent~~  
16 ~~amendments~~, and shall document all relevant information pertaining to such investigation and shall take the  
17 necessary steps to prevent further incidents of abuse, neglect or misappropriation of patient property while the  
18 investigation is in progress. The Code of Federal Regulations, Title 42, Public Health, Part 430 to the end, revised  
19 as of October 1, 2005, Description Item 572-B, may be purchased from the U.S. Government Printing Office, P.O.  
20 Box 979050, St. Louis, MO 63197-9000, by a direct telephone call to the G.P.O. at (866) 512-1800 or online at  
21 <http://bookstore.gpo.gov/> or accessed electronically at <http://ecfr.gpoaccess.gov/>.

22 (d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Health  
23 Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the  
24 allegation. The report shall include:

- 25 (1) the date and time of the alleged incident of abuse, neglect or misappropriation of property;  
26 (2) the patient's full name and room number;  
27 (3) details of the allegation and any injury;  
28 (4) names of the accused and any witnesses;  
29 (5) names of the facility staff who investigated the allegation;  
30 (6) results of the investigation;  
31 (7) and any corrective action that may have been taken by the facility.

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33 *History Note: Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256;*  
34 *Eff. January 1, 1996;*  
35 *Amended Eff. August 1, 2008; October 1, 1998; 1998;*  
36 *Amended Eff. January 1, 2013.*

1 10A NCAC 13D .2301 is amended as published in NCR 27:03, PP. 310-320, as follows:

2

3 **10A NCAC 13D .2301 PATIENT ASSESSMENT AND PLAN OF CARE PLANNING**

4 (a) At the time each patient is admitted, the facility shall ensure medical orders are available for the patient's  
5 immediate care and that, within 24 hours, a nursing assessment of immediate needs is completed by a registered  
6 nurse and measures implemented as appropriate.

7 (b) The facility shall perform, within 14 days of admission and at least annually, a comprehensive, accurate,  
8 documented assessment of each patient's capability to perform daily life functions. This comprehensive assessment  
9 shall be coordinated by a registered nurse and shall include at least the following:

- 10 (1) current medical diagnoses;
- 11 (2) medical status measurements, including current cognitive status, stability of current conditions and  
12 diseases, vital signs, and abnormal lab values and diagnostic tests that are a part of the medical  
13 history;
- 14 (3) the patient's ability to perform activities of daily living, including the need for staff assistance and  
15 assistive devices, and the patient's ability to make decisions;
- 16 (4) presence of neurological or muscular deficits;
- 17 (5) nutritional status measurements and requirements, including but not limited to height, weight, lab  
18 work, eating habits and preferences, and any dietary restrictions;
- 19 (6) special care needs, including but not limited to pressure sores, enteral feedings, specialized  
20 rehabilitation services or respiratory care;
- 21 (7) indicators of special needs related to patient behavior or mood, interpersonal relationships and  
22 other psychosocial needs;
- 23 (8) facility's expectation of discharging the patient within the three months following admission;
- 24 (9) condition of teeth and gums, and need and use of dentures or other dental appliances;
- 25 (10) patient's ability and desire to take part in activities, including an assessment of the patient's normal  
26 routine and lifetime preferences;
- 27 (11) patient's ability to improve in functional abilities through restorative care;
- 28 (12) presence of visual, hearing or other sensory deficits; and
- 29 (13) drug therapy.

30 (c) The facility shall develop a comprehensive care plan of care for each patient and shall include measurable  
31 objectives and timetables to meet needs identified in the comprehensive assessment. The facility shall ensure the  
32 comprehensive care plan of care is developed within seven days of completion of the comprehensive assessment by  
33 an interdisciplinary team that includes a registered nurse with responsibility for the patient and representatives of  
34 other appropriate disciplines as dictated by the needs of the patient. To the extent practicable, preparation of the  
35 comprehensive care plan of care shall include the participation of the patient and the patient's family or legal  
36 representative. The physician may participate by alternative methods, including, but not limited to, telephone or  
37 face-to-face discussion, or written notice.

1 (d) The facility shall review comprehensive assessments and ~~care~~ plans of care no less frequently than once every  
2 90 days and make necessary revisions to ensure accuracy.

3

4 *History Note: Authority G.S. 131E-104;*

5 *RRC objection due to lack of statutory authority Eff. July 13, 1995;*

6 *Eff. January 1, ~~1996~~. 1996;*

7 *Amended Eff. January 1, 2013.*