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: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2105

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*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.*

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AGENCY: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2202

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

X Approve, but note staff’s comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*The RRC objected to this rule in July 1995 based on a lack of statutory authority. At the time the agency could put this rule into effect over the Commission’s objection and the agency did so, effective January 1, 1996.*

*The objection was based on the role of the administrator in what was then (b) (and now proposed to be deleted) and the definition of “Administrator” in rule 13D .2001(5) which required the administrator of one of these facilities to be licensed by the NC State Board of Examiners for Nursing Home Administrators. There was no authority cited – and to the best of counsel’s knowledge there is no authority existing – for the MCC to require the administrator of a facility to meet any sort of certification or licensure requirement. (It may well be the law that a person operating in such a capacity must be licensed, but that is independent of the MCC’s authority to require such licensure.)*

*Since there no longer is any reference in (b) or elsewhere in this rule to any role for an administrator, counsel is recommending that the RRC approve this rule as submitted.*

RRC STAFF OPINION

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AGENCY: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2203

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*For the same reasons cited in the previous rule, counsel is recommending an objection to this rule. There is a reference to and a role for an administrator in (b) lines 8 and 11.*

RRC STAFF OPINION

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AGENCY: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2210

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*The RRC should object to this rule for the same reasons cited in Rule .2202.*

*The role for the administrator is set in (b) and (d) lines 8 and 22.*

RRC STAFF OPINION

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AGENCY: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2301

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*The RRC should object to this rule for the same reasons cited in Rule .2202.*

*The agency requires the services of a registered nurse in (c) line 33.*

RRC STAFF OPINION

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AGENCY: NC MEDICAL CARE COMMISSION

RULE CITATION: 10A NCAC 13D .2303

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*There is no authority cited for the provisions in (b), (c) and (d) setting staffing requirements and qualifications.*