

Burgos, Alexander N

Subject: FW: 13F/G Final rules- Phase 4

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, November 13, 2023 11:08 AM
To: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 13F/G Final rules- Phase 4

Hi all,

These are the final rules I'm recommending approval of. Go ahead and file/post.

Thanks!
Brian

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From: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Sent: Monday, November 13, 2023 10:57 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: 13F/G Final rules- Phase 4

Hello!

Attached are the final rules for RRC approval. The fifth rule in this group, 10A NCAC 13G .0504, was already approved by the RRC and became effective 10/1/23.

Best,

Taylor Corpening
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Division of Health Service Regulation
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1 010A NCAC 13F .0702 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .0702 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- 9 (1) ~~the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
11 (2) ~~the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
13 (3) ~~the safety of other individuals in the facility is endangered;~~
14 (4) ~~the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~
16 (5) ~~failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~
18 (6) ~~the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- 21 (1) ~~the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~
23 (2) ~~reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- 26 (1) ~~documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~
28 (2) ~~the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~
31 (3) ~~written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~
33 (4) ~~the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications;~~

32 ~~(F) a record of the resident's vaccinations and TB screening;~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period.. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner~~
 27 ~~[practitioner;] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner;] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered;] endangered as~~
 32 ~~determined by the facility at the direction of the administrator or their designee in consultation with~~
 33 ~~the resident's physician, physician assistant, or nurse practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner;] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The ~~facility~~ facility administrator or their designee shall assure the following requirements for written notice are
 6 met before discharging a resident:

7 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 8 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 9 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 10 of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc->
 11 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

12 (A) the date of notice;

13 (B) the date of transfer or discharge;

14 (C) the reason for the notice;

15 (D) the name of responsible person or contact person notified;

16 (E) the planned discharge location;

17 (F) the appeal rights;

18 (G) the contact information for the long-term care ombudsman; and

19 (H) the signature and date of the administrator.

20 (2) A copy of the completed Adult Care Home Notice of Discharge ~~[with a copy of the]~~ and Adult Care
 21 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 22 mail to the resident's responsible person or legal representative and the individual identified upon
 23 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 24 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 25 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 26 to medical, social, or other personal information of the resident; manage financial matters; or receive
 27 notifications. The Adult Care Home Hearing Request Form shall include the following:

28 (A) the name of the resident;

29 (B) the name of the facility;

30 (C) the date of transfer or discharge;

31 (D) the date of scheduled transfer or discharge;

32 (E) the selection of how the hearing is to be conducted;

33 (F) the name of the person requesting the hearing; and

34 (G) for the person requesting the hearing, their relationship to the resident, address,
 35 telephone number, their signature, and date of the request.

36 (3) Provide the following material in accordance with the Health Insurance Portability and
 37 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative].

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility administrator or their designee prior to giving to the
 11 resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall
 12 be maintained in the resident's record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 administrator or their designee, at least 30 days before the resident is discharged except that notices may be made as
 15 soon as practicable when:

16 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 17 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 18 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

19 (2) reasons under Subparagraphs [(b)(2); (b)(3); (b)(3) and (b)(4) of this Rule exist.

20 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 21 discharge [locations:] locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 22 Information which is hereby incorporated by reference, including any amendments and subsequent editions, and can
 23 be found at no cost at [https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-](https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-individually-identifiable-health-information)
 24 individually-identifiable-health-information:

25 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 26 Paragraph (b) of this Rule:

27 (A) documentation by physician, physician assistant or nurse practitioner as required in
 28 Paragraph (b) of this Rule;

29 (B) the condition or circumstance that endangers the health or safety of the resident being
 30 discharged or endangers the health or safety of individuals in the facility, and the facility's
 31 action taken to address the problem prior to pursuing discharge of the resident;

32 (C) written notices of warning of discharge for failure to pay the costs of services and
 33 accommodations; or

34 (D) the specific health need or condition of the resident that the facility determined could not
 35 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 36 contract signed upon the resident's admission to the facility; and

1 (2) any known ~~[intervention]~~ involvement of law enforcement with the resident due to threatening
2 behavior or violence toward self or others.

3 (f) The facility administrator or their designee shall document contacts with possible discharge locations and
4 responses and make available this documentation, upon request, to the resident, legal representative, the individual
5 identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident
6 discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a
7 discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible
8 person as identified in the resident’s record.

9 (g) The facility administrator or their designee shall provide sufficient preparation and orientation to residents to
10 ensure a safe and orderly discharge from the facility as evidenced by:

11 (1) explaining to the resident and responsible person or legal representative and the individual identified
12 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
13 is necessary;

14 (2) informing the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident about an
16 appropriate discharge ~~[destination;]~~ destination that is capable of meeting the needs of the resident;
17 and

18 (A) If at the time of the discharge notice the discharge destination is unknown or ~~[is not~~
19 ~~appropriate for]~~ is not capable of meeting the needs of the resident, the facility
20 administrator or their designee shall contact the local adult care home resident discharge
21 team as defined in G.S. 131D-4.8(e) to assist with placement; and

22 (B) The ~~[facility]~~ facility, at the direction of the administrator or their designee, shall inform
23 the ~~[resident and]~~ resident, the resident’s legal ~~[representative]~~ representative, the
24 individual identified upon admission to receive a copy of the discharge notice on behalf of
25 the resident, and the responsible person of their right to request the Regional Long-Term
26 Care Ombudsman to serve as a member of the adult care home resident discharge ~~[team;]~~
27 team; and

28 (3) offering the following material to the ~~[caregiver]~~ resident, the resident’s legal representative, or the
29 facility [with whom] where the resident is to be placed and providing this material as requested prior
30 to or upon discharge of the resident:

31 (A) a copy of the resident's most current ~~[FL-2;]~~ FL-2 form required in Rule .0703 of this
32 Subchapter;

33 (B) a copy of the resident's most current assessment and care plan;

34 (C) a list of referrals to licensed health professionals, including mental health;

35 (D) a copy of the resident's current physician orders;

36 (E) a list of the resident's current medications;

37 (F) the resident's current medications; and

- 1 (G) a record of the resident's vaccinations and TB screening;
 2 (4) providing written notice of the name, address and telephone number of the following, if not provided
 3 on the discharge notice required in Paragraph (c) of this Rule:
 4 (A) the regional long-term care ombudsman; and
 5 (B) Disability Rights North Carolina, the protection and advocacy agency established under
 6 federal law for persons with disabilities;
 7 (5) providing the resident, responsible [party] person, or legal [representative] representative, and the
 8 individual identified upon admission who received a copy of the discharge notice on behalf of the
 9 resident with the discharge location as determined by the adult care home resident discharge team,
 10 if convened, at or before the discharge hearing, if the location is known to the facility.

11 (h) If an appeal hearing is requested:

- 12 (1) the facility administrator or their designee shall provide to the resident or legal representative or the
 13 resident and the responsible [person, and] person, the Hearing Unit copies of all documents and
 14 records that the facility intends to use at the hearing at least five working days prior to the scheduled
 15 hearing; and
 16 (2) the facility administrator or their designee shall not discharge the resident before the final decision
 17 resulting from the appeal has been rendered, except in those cases of discharge specified in
 18 Paragraph (d) of this Rule.

19 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 20 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 21 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 22 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 23 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 24 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 25 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 26 provided to the resident or responsible person upon admission.

27 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 28 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 29 expected return of the resident. If the facility administrator or their designee decides to discharge a resident who has
 30 been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the
 31 resident, the discharge requirements in this Rule apply.

32
 33 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; 131D-4.8; 131D-21; 143B-165;*
 34 *Eff. January 1, 1977;*
 35 *Readopted Eff. October 31, 1977;*
 36 *Temporary Amendment Eff. July 1, 2003;*
 37 *Amended Eff. July 1, 2004- 2004.*

1

Readopted Eff. [~~October 1, 2023.~~ April 1, 2024.

1 10A NCAC 13F .1307 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN**

4 In addition to the requirements in Rules ~~13F .0801~~ and ~~13F .0802~~ of this Subchapter, the facility ~~shall assure the~~
5 ~~following:~~ shall:

6 (1) Within 30 days of admission to the special care unit and quarterly thereafter, ~~the facility shall~~
7 develop a written resident profile containing assessment data that describes the resident's behavioral
8 patterns, self-help abilities, level of daily living skills, special management needs, physical abilities
9 and disabilities, and degree of cognitive impairment.

10 (2) ~~The resident care plan as required in Rule 13F .0802 of this Subchapter shall be developed or revised~~
11 Develop or revise the resident's care plan required in Rule .0802 of this Subchapter based on the
12 resident profile and specify programming that involves environmental, social and health care
13 strategies to help the resident attain or maintain the maximum level of functioning possible and
14 compensate for lost abilities.

15
16 *History Note:* Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; ~~131D-8;~~ 143B-165;

17 *Temporary Adoption Eff. December 1, 1999;*

18 *Eff. July 1, ~~2000~~ 2000;*

19 *Readopted Eff. [~~October 1, 2023;~~ April 1, 2024.*

20

1 10A NCAC 13G .0705 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13G .0705 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

9 ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

11 ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

13 ~~(3) the safety of other individuals in the facility is endangered;~~

14 ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~

16 ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~

18 ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

21 ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~

23 ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

26 ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~

28 ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~

31 ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~

33 ~~(4) the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications; and~~

32 ~~(F) a record of the resident's vaccinations and TB screening.~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse~~
 27 ~~[practitioner:] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner:] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered:] endangered as~~
 32 ~~determined by the facility at the direction of the administrator or their designee in consultation with~~
 33 ~~the resident's physician, physician assistant, or nurse practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner:] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The [facility] facility administrator or their designee, shall assure the following requirements for written notice
 6 are met before discharging a resident:

7 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 8 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 9 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 10 of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc->
 11 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

12 (A) the date of notice;

13 (B) the date of transfer or discharge;

14 (C) the reason for the notice;

15 (D) the name of responsible person or contact person notified;

16 (E) the planned discharge location;

17 (F) the appeal rights;

18 (G) the contact information for the long-term care ombudsman; and

19 (H) the signature and date of the administrator.

20 (2) A copy of the completed Adult Care Home Notice of Discharge [with a copy of the] and Adult Care
 21 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 22 mail to the resident's responsible person or legal representative and the individual identified upon
 23 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 24 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 25 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 26 to medical, social, or other personal information of the resident; manage financial matters; or receive
 27 notifications. The Adult Care Home Hearing Request Form shall include the following:

28 (A) the name of the resident;

29 (B) the name of the facility;

30 (C) the date of transfer or discharge;

31 (D) the date of scheduled transfer or discharge;

32 (E) the selection of how the hearing is to be conducted;

33 (F) the name of the person requesting the hearing; and

34 (G) for the person requesting the hearing, their relationship to the resident, address, telephone
 35 number, their signature, and date of the request.

36 (3) Provide the following material in accordance with the Health Insurance Portability and
 37 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative].

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current ~~[FL-2]~~ FL-2 form required in Rule .0703 of this
 4 Subchapter:

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. ~~[Failure to use the latest version of these forms~~
 8 ~~shall not invalidate the discharge.]~~

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility administrator or their designee prior to giving to the
 11 resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall
 12 be maintained in the resident's record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 administrator or their designee, at least 30 days before the resident is discharged except that notices may be made as
 15 soon as practicable when:

16 (1) ~~the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
 17 ~~in the facility]~~ discharge is necessary to protect the welfare of the resident and the facility cannot
 18 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

19 (2) reasons under Subparagraphs ~~[(b)(2), (b)(3),~~ (b)(3) and (b)(4) of this Rule exist.

20 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 21 discharge ~~[locations:]~~ locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 22 Information which is hereby incorporated by reference, including any amendments and subsequent editions, and can
 23 be found at no cost at [https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-](https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-individually-identifiable-health-information)
 24 individually-identifiable-health-information:

25 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 26 Paragraph (b) of this Rule:

27 (A) documentation by physician, physician assistant or nurse practitioner as required in
 28 Paragraph (b) of this Rule;

29 (B) the condition or circumstance that endangers the health or safety of the resident being
 30 discharged or endangers the health or safety of individuals in the facility, and the facility's
 31 taken to address the problem prior to pursuing discharge of the resident;

32 (C) written notices of warning of discharge for failure to pay the costs of services and
 33 accommodations; or

34 (D) the specific health need or condition of the resident that the facility determined could not
 35 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 36 contract signed upon the resident's admission to the facility; and

1 (2) any known intervention involvement of law enforcement with the resident due to threatening
2 behavior or violence toward self or others.

3 (f) The facility administrator or their designee shall document contacts with possible discharge locations and
4 responses and make available this documentation, upon request, to the resident, legal representative, the individual
5 identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident
6 discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a
7 discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible
8 person as identified in the resident’s record.

9 (g) The facility administrator or their designee shall provide sufficient preparation and orientation to residents to
10 ensure a safe and orderly discharge from the facility as evidenced by:

11 (1) explaining to the resident and responsible person or legal representative and the individual identified
12 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
13 is necessary;

14 (2) informing the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident about an
16 appropriate discharge ~~destination;~~ destination that is capable of meeting the needs of the resident;
17 and

18 (A) If at the time of the discharge notice the discharge destination is unknown or ~~is not~~
19 ~~appropriate for~~ is not capable of meeting the needs of the resident, the facility
20 administrator or their designee, shall contact the local adult care home resident discharge
21 team as defined in G.S. 131D-4.8(e) to assist with placement; and

22 (B) The ~~facility~~ facility, at the direction of the administrator or their designee, shall inform
23 the ~~resident and~~ resident, the resident’s legal ~~representative~~ representative, the
24 individual identified upon admission to receive a copy of the discharge notice on behalf of
25 the resident, and the responsible person of their right to request the Regional Long-Term
26 Care Ombudsman to serve as a member of the adult care home resident discharge ~~team;~~
27 team; and

28 (3) offering the following material to the ~~caregiver~~ resident, the resident’s legal representative, or the
29 facility [with whom] where the resident is to be placed and providing this material as requested prior
30 to or upon discharge of the resident:

31 (A) a copy of the resident's most current ~~FL-2;~~ FL-2 form required in Rule .0703 of this
32 Subchapter;

33 (B) a copy of the resident's most current assessment and care plan;

34 (C) a list of referrals to licensed health professionals, including mental health;

35 (D) a copy of the resident's current physician orders;

36 (E) a list of the resident's current medications;

37 (F) the resident's current medications; and

- 1 (G) a record of the resident's vaccinations and TB screening;
 2 (4) providing written notice of the name, address and telephone number of the following, if not provided
 3 on the discharge notice required in Paragraph (c) of this Rule:
 4 (A) the regional long-term care ombudsman; and
 5 (B) Disability Rights North Carolina, the protection and advocacy agency established under
 6 federal law for persons with disabilities.
 7 (5) providing the resident, responsible [party] person, or legal [representative] representative, and the
 8 individual identified upon admission who received a copy of the discharge notice on behalf of the
 9 resident with the discharge location as determined by the adult care home resident discharge team,
 10 if convened, at or before the discharge hearing, if the location is known to the facility.
 11 (h) If an appeal hearing is requested:
 12 (1) the facility administrator or their designee shall provide to the resident or legal representative or the
 13 resident and the responsible [person, and] person, the Hearing Unit copies of all documents and
 14 records that the facility intends to use at the hearing at least five working days prior to the scheduled
 15 hearing; and
 16 (2) the facility administrator or their designee shall not discharge the resident before the final decision
 17 resulting from the appeal has been rendered, except in those cases of discharge specified in
 18 Paragraph (d) of this Rule.
 19 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 20 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 21 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 22 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 23 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 24 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 25 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 26 provided to the resident or responsible person upon admission.
 27 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 28 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 29 expected return of the resident. If the facility administrator or their designee decides to discharge a resident who has
 30 been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the
 31 resident, the discharge requirements in this Rule apply.

32
 33 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
 34 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
 35 *Eff. April 1, 2001;*
 36 *Temporary Amendment Eff. July 1, 2003;*
 37 *Amended Eff. July 1, 2004- 2004;*

1

Readopted Eff. [~~October 1, 2023.~~ April 1, 2024.

1 10A NCAC 13G .1301 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

4
5 **10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which that~~ restricts freedom of movement or normal
8 access to one's body, shall be:

- 9 (1) used only in those circumstances in which the resident has medical symptoms for which the
10 resident's physician or physician extender has determined ~~that~~ warrant the use of restraints and not
11 for ~~discipline~~ ~~[discipline, behavioral crisis intervention,]~~ discipline or convenience purposes;
12 (2) used only with a written order from a physician or physician extender except in emergencies where
13 the health or safety of the resident is threatened, according to Paragraph ~~(e)~~ (d) of this Rule;
14 (3) the least restrictive restraint that would ~~provide safety;~~ provide a safe environment for the resident
15 and prevent harm; physical injury;
16 (4) used only after alternatives that would provide ~~safety to prevent harm to a safe environment for~~ the
17 resident to prevent physical injury and prevent a potential decline in the resident's functioning have
18 been tried and documented by the administrator or their designee in the resident's ~~record.~~ record as
19 being unsuccessful.
20 (5) used only after an assessment and care planning process has been completed, except in ~~emergencies,~~
21 emergencies where the health or safety of the resident is threatened, according to Paragraph ~~(d)~~ (c)
22 of this Rule;
23 (6) applied correctly according to the manufacturer's instructions and the physician's or physician
24 extenders' order; and
25 (7) used in conjunction with alternatives in an effort to reduce restraint use. For the purpose of this Rule,
26 "physician extender" means a licensed physician assistant or licensed nurse practitioner.

27 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
28 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
29 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
30 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
31 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
32 providing supportive devices such as wedge cushions.

33 (b) The facility shall ask obtain written consent from the ~~resident or resident, the~~ resident's responsible person, or
34 legal representative if the resident may for the resident to be restrained based on an order from the resident's ~~physician.~~
35 physician or physician extender. The facility shall inform the ~~resident, resident, the resident's responsible person~~ or
36 legal representative of the reason for the ~~request and request,~~ the benefits of restraint use use, and the negative
37 outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse

1 restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the
 2 resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint
 3 use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

4 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
 5 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or ~~depression~~ depression, and reduced social
 6 contact.

7 (c) In addition to the requirements in Rule ~~13F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
 8 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
 9 (a)(5) of this Rule shall meet the following requirements:

10 (1) The assessment and care planning shall be implemented through a team process with the team
 11 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
 12 resident's responsible person or legal representative. If the resident or resident's responsible person
 13 or legal representative is unable to participate, there shall be documentation in the resident's record
 14 that they were notified and declined the invitation or were unable to attend.

15 (2) The assessment shall include consideration of the following:

- 16 (A) medical symptoms that warrant the use of a restraint;
- 17 (B) how the medical symptoms affect the resident;
- 18 (C) when the medical symptoms were first observed;
- 19 (D) how often the symptoms occur;
- 20 (E) alternatives that have been provided and the resident's response; and
- 21 (F) the least restrictive type of physical restraint that would provide safety.

22 (3) The care plan shall include the following:

- 23 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
 24 reduce restraint time once the resident is restrained;
- 25 (B) the type of restraint to be used; and
- 26 (C) care to be provided to the resident during the time the resident is restrained.

27 ~~(4) The resident assessment and care plan for the use of a restraint shall be provided to the physician or
 28 physician extender for evaluation prior to the physician or physician extender writing an order for a
 29 restraint.~~

30 ~~(5) The resident assessment and care plan for the use of a restraint shall be signed by the physician or
 31 physician extender within 15 days of the date of the assessment.~~

32 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

33 (1) The order shall indicate:

- 34 (A) the medical need for the ~~restraint~~; restraint based on the assessment and care plan;
- 35 (B) the type of restraint to be used;
- 36 (C) the period of time the restraint is to be used; and

- 1 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
 2 minutes for checks and **no longer than** two hours for releases.
- 3 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
 4 the resident's physician **or physician extender** of the order within seven days.
- 5 (3) The restraint order shall be updated by the resident's physician **or physician extender** at least every
 6 three months following the initial order.
- 7 (4) If the resident's physician changes, the physician **or physician extender** who is to attend the resident
 8 shall update and sign the existing order.
- 9 (5) In ~~an emergency situations, situations an emergency, where the health or safety of the resident is~~
 10 **threatened**, the administrator or ~~administrator in charge~~ **their designee** shall make the determination
 11 relative to the need for a restraint and its type and duration of use until a physician **or physician**
 12 **extender** is contacted. Contact with a physician **or physician extender** shall be made within 24 hours
 13 and documented in the resident's record. **For the purpose of this Rule, an "emergency" ["emergency**
 14 **situation"] means [when a resident is in imminent danger and there is fear for their safety and well-**
 15 **being-] a situation where there is a certain risk of physical injury or death to a resident.**
- 16 (6) The restraint order shall be kept in the resident's record.
- 17 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
 18 record and include the following:
- 19 (1) restraint alternatives that were provided and the resident's response;
- 20 (2) type of restraint that was used;
- 21 (3) medical symptoms warranting restraint use;
- 22 (4) the time the restraint was applied and the duration of restraint use;
- 23 (5) care that was provided to the resident during restraint use; and
- 24 (6) behavior of the resident during restraint use.
- 25 (f) Physical restraints shall be applied only by staff who have received training **on the use of alternatives to physical**
 26 **restraint use and on the care of residents who are physically restrained** according to Rule .0506 of this Subchapter and
 27 **have** been validated on ~~restraint use, the care of residents who are physically restrained and the use of care practices~~
 28 **as alternatives to restraints** according to Rule .0504 of this Subchapter.

29

30 *History Note: Authority G.S. 131D-2.16; 143B-165;*
 31 *Temporary Adoption Eff. July 1, 2004;*
 32 *Temporary Adoption Expired March 12, 2005;*
 33 *Eff. June 1, 2005- 2005;*
 34 *Readopted Eff. [October 1, 2023.] April 1, 2024.*

35

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G
Attachments: 10A NCAC 13F .0702.docx; 10A NCAC 13G .0705.docx; 10A NCAC 13G .1301.docx; Response to RRC Comments 11-9-23.docx

From: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Sent: Thursday, November 9, 2023 9:36 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Good morning,

Please see our responses to your concerns, as well as updated versions of the rules.

Best,

Taylor Corpening
Rule-making Coordinator
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

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13F .0702/13G .0705

In (c)(3)(A), line 13, what is a FL-2? *This is the medical examination form required to be completed prior to admission and annually by Rule .0703.*

I looked at Rule .0703, and it doesn't state the substantive requirements or contents of the FL-2 form. Is there another rule or statute that provides the substantive requirements or contents of the form?

The contents of the FL-2 form are contained in recently amended Rule .0703 which is scheduled for readoption and to be effective 1/1/24.

Since this rule becomes effective 4/1/24, I believe this is OK.

In (d), line 23, who makes the determination that it is now "practicable" to make the notice? *The facility would make that determination once they identify that the resident's health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.*

I'm a little uncomfortable with "the facility" making these decisions. This is an issue throughout the Rule. For instance, in (a), the Rule refers to discharges initiated "by the facility". Who at the facility would make these decisions? The language updated in (a) to include "at the direction of the administrator or their designee" to address and clarify who would be making these decisions.

The language in (a) is good, but there are many other instances throughout the Rule where it still says "the facility" will do something without making clear who that is.

Changes made throughout the Rule to indicate the "administrator or their designee" for clarity.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident's "record" and provided to discharge locations "upon request." However, 131D-21(6) states that information in the resident's "personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law." Is there an applicable State or federal law? It's not cited in the Rule or the History Note. *Paragraph (e) is covered under HIPPA in which Adult care facilities are "covered entities" as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose "protected health information" for purposes of "treatment, payment, or health care operations." We have included the reference to the applicable law in the history note.*

I don't see a change to the History Note. If it's a federal regulation, rather than a law, I think you'll need to incorporate it by reference in the body of the Rule, pursuant to 150B-21.6.

Change made; the HIPAA regulation incorporated by reference has been included in the body of the rule.

The incorporation has to state where the document is available, and at what cost, if any.

Changed to include where the document is available and at no cost.

13G .1301

In (d)(5), line 31, define an "emergency situation". See also (a)(2) and (a)(5). *Done, definition added for emergency situation.*

The language added is "when a resident is in imminent danger and there is fear for their safety and well-being." I have several questions:

In danger of what? Be specific.

Whose fear would justify this determination? A doctor? Family member?

“Well-being” is not used elsewhere in this Rule. How is it defined?

The definition for “emergency” has been included for clarity. The terms “danger” and “well-being” have been removed.

It says “an emergency” twice.

The additional “emergency” removed.

1 010A NCAC 13F .0702 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .0702 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- 9 (1) ~~the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
11 (2) ~~the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
13 (3) ~~the safety of other individuals in the facility is endangered;~~
14 (4) ~~the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~
16 (5) ~~failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~
18 (6) ~~the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- 21 (1) ~~the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~
23 (2) ~~reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- 26 (1) ~~documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~
28 (2) ~~the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~
31 (3) ~~written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~
33 (4) ~~the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications;~~

32 ~~(F) a record of the resident's vaccinations and TB screening;~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period.. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner~~
 27 ~~[practitioner;] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner;] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered;] endangered as~~
 32 ~~determined by the facility at the direction of the administrator or their designee in consultation with~~
 33 ~~the resident's physician, physician assistant, or nurse practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner;] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The ~~[facility]~~ facility administrator or their designee shall assure the following requirements for written notice are
 6 met before discharging a resident:

7 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 8 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 9 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 10 of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc->
 11 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

12 (A) the date of notice;

13 (B) the date of transfer or discharge;

14 (C) the reason for the notice;

15 (D) the name of responsible person or contact person notified;

16 (E) the planned discharge location;

17 (F) the appeal rights;

18 (G) the contact information for the long-term care ombudsman; and

19 (H) the signature and date of the administrator.

20 (2) A copy of the completed Adult Care Home Notice of Discharge ~~[with a copy of the]~~ and Adult Care
 21 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 22 mail to the resident's responsible person or legal representative and the individual identified upon
 23 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 24 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 25 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 26 to medical, social, or other personal information of the resident; manage financial matters; or receive
 27 notifications. The Adult Care Home Hearing Request Form shall include the following:

28 (A) the name of the resident;

29 (B) the name of the facility;

30 (C) the date of transfer or discharge;

31 (D) the date of scheduled transfer or discharge;

32 (E) the selection of how the hearing is to be conducted;

33 (F) the name of the person requesting the hearing; and

34 (G) for the person requesting the hearing, their relationship to the resident, address,
 35 telephone number, their signature, and date of the request.

36 (3) Provide the following material in accordance with the Health Insurance Portability and
 37 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative].

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility administrator or their designee prior to giving to the
 11 resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall
 12 be maintained in the resident's record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 administrator or their designee, at least 30 days before the resident is discharged except that notices may be made as
 15 soon as practicable when:

16 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 17 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 18 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

19 (2) reasons under Subparagraphs [(b)(2); (b)(3); (b)(3) and (b)(4) of this Rule exist.

20 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 21 discharge [locations:] locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 22 Information which is hereby incorporated by reference, including any amendments and subsequent editions, and can
 23 be found at no cost at [https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-](https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-individually-identifiable-health-information)
 24 individually-identifiable-health-information:

25 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 26 Paragraph (b) of this Rule:

27 (A) documentation by physician, physician assistant or nurse practitioner as required in
 28 Paragraph (b) of this Rule;

29 (B) the condition or circumstance that endangers the health or safety of the resident being
 30 discharged or endangers the health or safety of individuals in the facility, and the facility's
 31 action taken to address the problem prior to pursuing discharge of the resident;

32 (C) written notices of warning of discharge for failure to pay the costs of services and
 33 accommodations; or

34 (D) the specific health need or condition of the resident that the facility determined could not
 35 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 36 contract signed upon the resident's admission to the facility; and

1 (2) any known [intervention] involvement of law enforcement with the resident due to threatening
2 behavior or violence toward self or others.

3 (f) The facility administrator or their designee shall document contacts with possible discharge locations and
4 responses and make available this documentation, upon request, to the resident, legal representative, the individual
5 identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident
6 discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a
7 discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible
8 person as identified in the resident’s record.

9 (g) The facility administrator or their designee shall provide sufficient preparation and orientation to residents to
10 ensure a safe and orderly discharge from the facility as evidenced by:

11 (1) explaining to the resident and responsible person or legal representative and the individual identified
12 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
13 is necessary;

14 (2) informing the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident about an
16 appropriate discharge [destination;] destination that is capable of meeting the needs of the resident;
17 and

18 (A) If at the time of the discharge notice the discharge destination is unknown or [is not
19 appropriate for] is not capable of meeting the needs of the resident, the facility
20 administrator or their designee shall contact the local adult care home resident discharge
21 team as defined in G.S. 131D-4.8(e) to assist with placement; and

22 (B) The [facility] facility, at the direction of the administrator or their designee, shall inform
23 the [resident and] resident, the resident’s legal [representative] representative, the
24 individual identified upon admission to receive a copy of the discharge notice on behalf of
25 the resident, and the responsible person of their right to request the Regional Long-Term
26 Care Ombudsman to serve as a member of the adult care home resident discharge [team;]
27 team; and

28 (3) offering the following material to the [caregiver] resident, the resident’s legal representative, or the
29 facility [with whom] where the resident is to be placed and providing this material as requested prior
30 to or upon discharge of the resident:

31 (A) a copy of the resident's most current [FL-2;] FL-2 form required in Rule .0703 of this
32 Subchapter;

33 (B) a copy of the resident's most current assessment and care plan;

34 (C) a list of referrals to licensed health professionals, including mental health;

35 (D) a copy of the resident's current physician orders;

36 (E) a list of the resident's current medications;

37 (F) the resident's current medications; and

- 1 (G) a record of the resident's vaccinations and TB screening;
 2 (4) providing written notice of the name, address and telephone number of the following, if not provided
 3 on the discharge notice required in Paragraph (c) of this Rule:
 4 (A) the regional long-term care ombudsman; and
 5 (B) Disability Rights North Carolina, the protection and advocacy agency established under
 6 federal law for persons with disabilities;
 7 (5) providing the resident, responsible [party] person, or legal [representative] representative, and the
 8 individual identified upon admission who received a copy of the discharge notice on behalf of the
 9 resident with the discharge location as determined by the adult care home resident discharge team,
 10 if convened, at or before the discharge hearing, if the location is known to the facility.

11 (h) If an appeal hearing is requested:

- 12 (1) the facility administrator or their designee shall provide to the resident or legal representative or the
 13 resident and the responsible [person, and] person, the Hearing Unit copies of all documents and
 14 records that the facility intends to use at the hearing at least five working days prior to the scheduled
 15 hearing; and
 16 (2) the facility administrator or their designee shall not discharge the resident before the final decision
 17 resulting from the appeal has been rendered, except in those cases of discharge specified in
 18 Paragraph (d) of this Rule.

19 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 20 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 21 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 22 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 23 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 24 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 25 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 26 provided to the resident or responsible person upon admission.

27 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 28 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 29 expected return of the resident. If the facility administrator or their designee decides to discharge a resident who has
 30 been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the
 31 resident, the discharge requirements in this Rule apply.

32
 33 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; 131D-4.8; 131D-21; 143B-165;*
 34 *Eff. January 1, 1977;*
 35 *Readopted Eff. October 31, 1977;*
 36 *Temporary Amendment Eff. July 1, 2003;*
 37 *Amended Eff. July 1, 2004. 2004.*

1

Readopted Eff. [~~October 1, 2023.~~ April 1, 2024.

1 10A NCAC 13G .0705 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13G .0705 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- 9 (1) ~~the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
11 (2) ~~the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
13 (3) ~~the safety of other individuals in the facility is endangered;~~
14 (4) ~~the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~
16 (5) ~~failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~
18 (6) ~~the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- 21 (1) ~~the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~
23 (2) ~~reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- 26 (1) ~~documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~
28 (2) ~~the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~
31 (3) ~~written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~
33 (4) ~~the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications; and~~

32 ~~(F) a record of the resident's vaccinations and TB screening.~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse~~
 27 ~~[practitioner:] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner:] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered:] endangered as~~
 32 ~~determined by the facility at the direction of the administrator or their designee in consultation with~~
 33 ~~the resident's physician, physician assistant, or nurse practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner:] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The ~~[facility]~~ facility administrator or their designee, shall assure the following requirements for written notice
 6 are met before discharging a resident:

7 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 8 be **completed and** hand delivered, with receipt requested, to the resident on the same day the Adult
 9 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 10 of Health Benefits, on the internet website [12 \(A\) the date of notice;](https://policies.ncdhhs.gov/divisional/health-benefits-nc-</u>

 11 <u>medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:</u></p>
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13 (B) the date of transfer or discharge;

14 (C) the reason for the notice;

15 (D) the name of responsible person or contact person notified;

16 (E) the planned discharge location;

17 (F) the appeal rights;

18 (G) the contact information for the long-term care ombudsman; and

19 (H) the signature and date of the administrator.

20 (2) A copy of the **completed** Adult Care Home Notice of Discharge ~~[with a copy of the]~~ **and** Adult Care
 21 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 22 mail to the resident's responsible person or legal representative and the individual identified upon
 23 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 24 Home Notice of Discharge is dated. **For the purposes of this Rule “responsible person” means a**
 25 **person chosen by the resident to act on their behalf to support the resident in decision-making; access**
 26 **to medical, social, or other personal information of the resident; manage financial matters; or receive**
 27 **notifications. The Adult Care Home Hearing Request Form shall include the following:**

28 (A) the name of the resident;

29 (B) the name of the facility;

30 (C) the date of transfer or discharge;

31 (D) the date of scheduled transfer or discharge;

32 (E) the selection of how the hearing is to be conducted;

33 (F) the name of the person requesting the hearing; and

34 (G) for the person requesting the hearing, their relationship to the resident, address, telephone
 35 number, their signature, and date of the request.

36 (3) Provide the following material in accordance with the Health Insurance Portability and
 37 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal ~~[representative].~~

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter:

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility administrator or their designee prior to giving to the
 11 resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall
 12 be maintained in the resident's record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 administrator or their designee, at least 30 days before the resident is discharged except that notices may be made as
 15 soon as practicable when:

16 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 17 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 18 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

19 (2) reasons under Subparagraphs [(b)(2), (b)(3), (b)(3)] and (b)(4) of this Rule exist.

20 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 21 discharge [locations:] locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 22 Information which is hereby incorporated by reference, including any amendments and subsequent editions, and can
 23 be found at no cost at [https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-](https://www.federalregister.gov/documents/2002/08/14/02-20554/standards-for-privacy-of-individually-identifiable-health-information)
 24 individually-identifiable-health-information:

25 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 26 Paragraph (b) of this Rule:

27 (A) documentation by physician, physician assistant or nurse practitioner as required in
 28 Paragraph (b) of this Rule;

29 (B) the condition or circumstance that endangers the health or safety of the resident being
 30 discharged or endangers the health or safety of individuals in the facility, and the facility's
 31 taken to address the problem prior to pursuing discharge of the resident;

32 (C) written notices of warning of discharge for failure to pay the costs of services and
 33 accommodations; or

34 (D) the specific health need or condition of the resident that the facility determined could not
 35 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 36 contract signed upon the resident's admission to the facility; and

1 (2) any known intervention involvement of law enforcement with the resident due to threatening
2 behavior or violence toward self or others.

3 (f) The facility administrator or their designee shall document contacts with possible discharge locations and
4 responses and make available this documentation, upon request, to the resident, legal representative, the individual
5 identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident
6 discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a
7 discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible
8 person as identified in the resident’s record.

9 (g) The facility administrator or their designee shall provide sufficient preparation and orientation to residents to
10 ensure a safe and orderly discharge from the facility as evidenced by:

11 (1) explaining to the resident and responsible person or legal representative and the individual identified
12 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
13 is necessary;

14 (2) informing the resident and responsible person or legal representative and the individual identified
15 upon admission to receive a copy of the discharge notice on behalf of the resident about an
16 appropriate discharge ~~destination;~~ destination that is capable of meeting the needs of the resident;
17 and

18 (A) If at the time of the discharge notice the discharge destination is unknown or ~~is not~~
19 ~~appropriate for~~ is not capable of meeting the needs of the resident, the facility
20 administrator or their designee, shall contact the local adult care home resident discharge
21 team as defined in G.S. 131D-4.8(e) to assist with placement; and

22 (B) The ~~facility~~ facility, at the direction of the administrator or their designee, shall inform
23 the ~~resident and~~ resident, the resident’s legal ~~representative~~ representative, the
24 individual identified upon admission to receive a copy of the discharge notice on behalf of
25 the resident, and the responsible person of their right to request the Regional Long-Term
26 Care Ombudsman to serve as a member of the adult care home resident discharge ~~team;~~
27 team; and

28 (3) offering the following material to the ~~caregiver~~ resident, the resident’s legal representative, or the
29 facility ~~[with whom]~~ where the resident is to be placed and providing this material as requested prior
30 to or upon discharge of the resident:

31 (A) a copy of the resident's most current ~~FL-2;~~ FL-2 form required in Rule .0703 of this
32 Subchapter;

33 (B) a copy of the resident's most current assessment and care plan;

34 (C) a list of referrals to licensed health professionals, including mental health;

35 (D) a copy of the resident's current physician orders;

36 (E) a list of the resident's current medications;

37 (F) the resident's current medications; and

- 1 (G) a record of the resident's vaccinations and TB screening;
 2 (4) providing written notice of the name, address and telephone number of the following, if not provided
 3 on the discharge notice required in Paragraph (c) of this Rule:
 4 (A) the regional long-term care ombudsman; and
 5 (B) Disability Rights North Carolina, the protection and advocacy agency established under
 6 federal law for persons with disabilities.
 7 (5) providing the resident, responsible [party] person, or legal [representative] representative, and the
 8 individual identified upon admission who received a copy of the discharge notice on behalf of the
 9 resident with the discharge location as determined by the adult care home resident discharge team,
 10 if convened, at or before the discharge hearing, if the location is known to the facility.
 11 (h) If an appeal hearing is requested:
 12 (1) the facility administrator or their designee shall provide to the resident or legal representative or the
 13 resident and the responsible [person, and] person, the Hearing Unit copies of all documents and
 14 records that the facility intends to use at the hearing at least five working days prior to the scheduled
 15 hearing; and
 16 (2) the facility administrator or their designee shall not discharge the resident before the final decision
 17 resulting from the appeal has been rendered, except in those cases of discharge specified in
 18 Paragraph (d) of this Rule.
 19 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 20 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 21 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 22 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 23 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 24 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 25 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 26 provided to the resident or responsible person upon admission.
 27 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 28 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 29 expected return of the resident. If the facility administrator or their designee decides to discharge a resident who has
 30 been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the
 31 resident, the discharge requirements in this Rule apply.

32
 33 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
 34 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
 35 *Eff. April 1, 2001;*
 36 *Temporary Amendment Eff. July 1, 2003;*
 37 *Amended Eff. July 1, 2004- 2004;*

1

Readopted Eff. [~~October 1, 2023.~~ April 1, 2024.

1 10A NCAC 13G .1301 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

4
5 **10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which that~~ restricts freedom of movement or normal
8 access to one's body, shall be:

- 9 (1) used only in those circumstances in which the resident has medical symptoms for which the
10 resident's physician or physician extender has determined ~~that~~ warrant the use of restraints and not
11 for ~~discipline~~ ~~[discipline, behavioral crisis intervention,]~~ discipline or convenience purposes;
12 (2) used only with a written order from a physician or physician extender except in emergencies where
13 the health or safety of the resident is threatened, according to Paragraph ~~(e)~~ (d) of this Rule;
14 (3) the least restrictive restraint that would ~~provide safety;~~ provide a safe environment for the resident
15 and prevent harm; physical injury;
16 (4) used only after alternatives that would provide ~~safety to prevent harm to a safe environment for~~ the
17 resident to prevent physical injury and prevent a potential decline in the resident's functioning have
18 been tried and documented by the administrator or their designee in the resident's ~~record.~~ record as
19 being unsuccessful.
20 (5) used only after an assessment and care planning process has been completed, except in ~~emergencies,~~
21 emergencies where the health or safety of the resident is threatened, according to Paragraph ~~(d)~~ (c)
22 of this Rule;
23 (6) applied correctly according to the manufacturer's instructions and the physician's or physician
24 extenders' order; and
25 (7) used in conjunction with alternatives in an effort to reduce restraint use. For the purpose of this Rule,
26 "physician extender" means a licensed physician assistant or licensed nurse practitioner.

27 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
28 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
29 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
30 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
31 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
32 providing supportive devices such as wedge cushions.

33 (b) The facility shall ~~ask~~ obtain written consent from the ~~resident or resident, the~~ resident's responsible person, or
34 legal representative if the resident may, for the resident to be restrained based on an order from the resident's ~~physician.~~
35 physician or physician extender. The facility shall inform the ~~resident, resident, the resident's responsible person~~ or
36 legal representative of the reason for the ~~request and request,~~ the benefits of restraint use use, and the negative
37 outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse

1 restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the
 2 resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint
 3 use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

4 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
 5 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression depression, and reduced social
 6 contact.

7 (c) In addition to the requirements in Rule ~~13F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
 8 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
 9 (a)(5) of this Rule shall meet the following requirements:

10 (1) The assessment and care planning shall be implemented through a team process with the team
 11 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
 12 resident's responsible person or legal representative. If the resident or resident's responsible person
 13 or legal representative is unable to participate, there shall be documentation in the resident's record
 14 that they were notified and declined the invitation or were unable to attend.

15 (2) The assessment shall include consideration of the following:

- 16 (A) medical symptoms that warrant the use of a restraint;
- 17 (B) how the medical symptoms affect the resident;
- 18 (C) when the medical symptoms were first observed;
- 19 (D) how often the symptoms occur;
- 20 (E) alternatives that have been provided and the resident's response; and
- 21 (F) the least restrictive type of physical restraint that would provide safety.

22 (3) The care plan shall include the following:

- 23 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
 24 reduce restraint time once the resident is restrained;
- 25 (B) the type of restraint to be used; and
- 26 (C) care to be provided to the resident during the time the resident is restrained.

27 ~~(4) The resident assessment and care plan for the use of a restraint shall be provided to the physician or~~
 28 ~~physician extender for evaluation prior to the physician or physician extender writing an order for a~~
 29 ~~restraint.~~

30 ~~(5) The resident assessment and care plan for the use of a restraint shall be signed by the physician or~~
 31 ~~physician extender within 15 days of the date of the assessment.~~

32 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

33 (1) The order shall indicate:

- 34 (A) the medical need for the ~~restraint~~; restraint based on the assessment and care plan;
- 35 (B) the type of restraint to be used;
- 36 (C) the period of time the restraint is to be used; and

- 1 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
 2 minutes for checks and **no longer than** two hours for releases.
- 3 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
 4 the resident's physician **or physician extender** of the order within seven days.
- 5 (3) The restraint order shall be updated by the resident's physician **or physician extender** at least every
 6 three months following the initial order.
- 7 (4) If the resident's physician changes, the physician **or physician extender** who is to attend the resident
 8 shall update and sign the existing order.
- 9 (5) In ~~an emergency situations, situations an emergency, where the health or safety of the resident is~~
 10 **threatened**, the administrator or ~~administrator in charge~~ **their designee** shall make the determination
 11 relative to the need for a restraint and its type and duration of use until a physician **or physician**
 12 **extender** is contacted. Contact with a physician **or physician extender** shall be made within 24 hours
 13 and documented in the resident's record. **For the purpose of this Rule, an "emergency" ["emergency**
 14 **situation"] means [when a resident is in imminent danger and there is fear for their safety and well-**
 15 **being-] a situation where there is a certain risk of physical injury or death to a resident.**
- 16 (6) The restraint order shall be kept in the resident's record.
- 17 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
 18 record and include the following:
- 19 (1) restraint alternatives that were provided and the resident's response;
- 20 (2) type of restraint that was used;
- 21 (3) medical symptoms warranting restraint use;
- 22 (4) the time the restraint was applied and the duration of restraint use;
- 23 (5) care that was provided to the resident during restraint use; and
- 24 (6) behavior of the resident during restraint use.
- 25 (f) Physical restraints shall be applied only by staff who have received training **on the use of alternatives to physical**
 26 **restraint use and on the care of residents who are physically restrained** according to Rule .0506 of this Subchapter and
 27 **have** been validated on ~~restraint use, the care of residents who are physically restrained and the use of care practices~~
 28 **as alternatives to restraints** according to Rule .0504 of this Subchapter.

29

30 *History Note: Authority G.S. 131D-2.16; 143B-165;*
 31 *Temporary Adoption Eff. July 1, 2004;*
 32 *Temporary Adoption Expired March 12, 2005;*
 33 *Eff. June 1, 2005- 2005;*
 34 *Readopted Eff. [October 1, 2023.] April 1, 2024.*

35

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Sent: Wednesday, November 8, 2023 2:20 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Brian,

Thank you for your response! We will get back to you soon.

Best,

Taylor Corpening
Rule-making Coordinator
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

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2701 Mail Service Center
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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Wednesday, November 8, 2023 2:09 PM
To: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Taylor,

We're almost there. A few minor follow ups.

13F .0702/13G .0705

In (c)(3)(A), line 13, what is a FL-2? *This is the medical examination form required to be completed prior to admission and annually by Rule .0703.*

I looked at Rule .0703, and it doesn't state the substantive requirements or contents of the FL-2 form. Is there another rule or statute that provides the substantive requirements or contents of the form?

The contents of the FL-2 form are contained in recently amended Rule .0703 which is scheduled for re adoption and to be effective 1/1/24.

Since this rule becomes effective 4/1/24, I believe this is OK.

In (d), line 23, who makes the determination that it is now “practicable” to make the notice? *The facility would make that determination once they identify that the resident’s health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.* I’m a little uncomfortable with “the facility” making these decisions. This is an issue throughout the Rule. For instance, in (a), the Rule refers to discharges initiated “by the facility”. Who at the facility would make these decisions? The language updated in (a) to include “at the direction of the administrator or their designee” to address and clarify who would be making these decisions.

The language in (a) is good, but there are many other instances throughout the Rule where it still says “the facility” will do something without making clear who that is.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident’s “record” and provided to discharge locations “upon request.” However, 131D-21(6) states that information in the resident’s “personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law.” Is there an applicable State or federal law? It’s not cited in the Rule or the History Note. *Paragraph (e) is covered under HIPAA in which Adult care facilities are “covered entities” as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose “protected health information” for purposes of “treatment, payment, or health care operations.”. We have included the reference to the applicable law in the history note.*

I don’t see a change to the History Note. If it’s a federal regulation, rather than a law, I think you’ll need to incorporate it by reference in the body of the Rule, pursuant to 150B-21.6.

Change made; the HIPAA regulation incorporated by reference has been included in the body of the rule.

The incorporation has to state where the document is available, and at what cost, if any.

13G .1301

In (d)(5), line 31, define an “emergency situation”. See also (a)(2) and (a)(5). *Done, definition added for emergency situation.*

The language added is “when a resident is in imminent danger and there is fear for their safety and well-being.” I have several questions:

In danger of what? Be specific.

Whose fear would justify this determination? A doctor? Family member?

“Well-being” is not used elsewhere in this Rule. How is it defined?

The definition for “emergency” has been included for clarity. The terms “danger” and “well-being” have been removed.

It says “an emergency” twice.

Otherwise, I think everything looks good. If you can make these changes and get back to me before Friday, I’d appreciate it.

Brian

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E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G
Attachments: 10A NCAC 13F .0702.docx; 10A NCAC 13G .0705.docx; 10A NCAC 13G .1301.docx; RRC Tech Changes response 11.7.23.docx

From: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Sent: Tuesday, November 7, 2023 1:02 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Brian,

Attached are updated versions on 13F .0702, 13G .0705, and 13G .1301 as well as written responses to your comments. Please let me know if you have any questions.

Best,

Taylor Corpening
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13F .0702/13G .0705

In (c)(3)(A), line 13, what is a FL-2? *This is the medical examination form required to be completed prior to admission and annually by Rule .0703.*

I looked at Rule .0703, and it doesn't state the substantive requirements or contents of the FL-2 form. Is there another rule or statute that provides the substantive requirements or contents of the form?

The contents of the FL-2 form are contained in recently amended Rule .0703 which is scheduled for readoption and to be effective 1/1/24.

In (d), line 23, who makes the determination that it is now "practicable" to make the notice? *The facility would make that determination once they identify that the resident's health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.*

I'm a little uncomfortable with "the facility" making these decisions. This is an issue throughout the Rule. For instance, in (a), the Rule refers to discharges initiated "by the facility". Who at the facility would make these decisions? The language updated in (a) to include "at the direction of the administrator or their designee" to address and clarify who would be making these decisions.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident's "record" and provided to discharge locations "upon request." However, 131D-21(6) states that information in the resident's "personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law." Is there an applicable State or federal law? It's not cited in the Rule or the History Note. *Paragraph (e) is covered under HIPAA in which Adult care facilities are "covered entities" as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose "protected health information" for purposes of "treatment, payment, or health care operations." We have included the reference to the applicable law in the history note.*

I don't see a change to the History Note. If it's a federal regulation, rather than a law, I think you'll need to incorporate it by reference in the body of the Rule, pursuant to 150B-21.6.

Change made; the HIPAA regulation incorporated by reference has been included in the body of the rule.

In (e)(2), line 4, what is an "intervention"? *Any time law enforcement has had to intervene in a situation involving a resident. Example: law enforcement is called by a facility due to a resident threatening to harm another resident and law enforcement comes to the facility to intervene.*

Does it mean that law enforcement simply arrives and speaks to the resident? Does it mean that the resident is detained or arrested? There's a spectrum of actions that a law enforcement officer can take upon being called, and I just wonder where "intervention" is on that spectrum. Changed "intervention" to "involvement". It means any time a facility has to contact law enforcement to intervene or be involved in a situation with a resident. Typically, these are situations where there is physical assault or aggression toward other residents or staff, reports of illegal drug use, or threats of suicide.

In (g)(2), line 19, please define "appropriate". *An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care*

home cannot discharge a resident who requires a secure memory care unit to an independent living apartment.

This makes sense, but the Rule doesn't say that. Please amend the Rule.

Rule amended to include the "destination that is capable of meeting the needs of the resident."

In (g)(2)(A), line 20-21, please define "not appropriate". *An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment – this would be an inappropriate discharge location. Occasionally, adult care homes will indicate on the discharge form that the discharge location is "the hospital" or "the homeless shelter." These are not appropriate discharge locations.*

This makes sense, but the Rule doesn't say that. Please amend the Rule.

Rule amended to remove not appropriate and include "is not capable of meeting the needs of" (the resident)

13G .1301

In (a)(1), line 9, who determines that the resident has medical symptoms warranting the use of restraints? The physician who has to write the order? Please clarify in the Rule. *(a)(1) updated to include “for which the resident’s physician or physician extender has determined” Physician extender also defined in (a)(7) for clarity.*

It looks like an additional change was made to (a)(1), to add “behavioral crisis intervention” to the list of things restraints may not be used for. Where did this change come from? Is it not a substantial change?

Removed “behavioral crisis intervention.”

In (a)(3), line 13, who determines what constitutes “safety”? What standards are used to determine that a restraint provides “safety”? A resident’s needs are determined through the assessment and care planning process defined in rules .0801 and .0802. A facility is to provide care and supervision to a resident in accordance with their assessment, care plan and current symptoms (rule .0901). The assessment, which is completed by facility staff and signed by the resident’s physician, may identify conditions that pose a safety risk to a resident. The facility is responsible, with direction and orders from the physician, to put interventions and services in place to assure the resident’s safety and prevent harm. (a)(3) changed from provide safety to “provide a safe environment for the resident and prevent harm”

If I understand, it appears that the “safe” part of the “safe environment” is at least partially determined according to the assessment and care plan, which is created by facility staff and a physician. But what about safety issues that arise outside of that context? Who makes that determination? Regardless of the answer, no language has been added to the rule to address this potential ambiguity. Please amend the Rule accordingly. Changed “harm” to “physical injury” for clarity and to help define safe environment. We could not think of a situation where safe environment would be determined by some other context.

One change that was made to both (3) and (4) is to add the modifier “prevent harm”. Please define “harm”, as that is a very broad and subjective term.

The term “harm” removed throughout the rule and changed to “physical injury”.

In (a)(4), lines 14-15, who determines what prevents a potential decline in the resident’s functioning, and what standards are used to make that determination? *Adult care home staff work with residents daily and observe them for changes in condition, including changes in their functional abilities, mood and behavior. Facility staff are required to report changes in a resident’s condition to the resident’s physician (rule .0902b) and may also be required to complete a “significant change assessment” per rule .0801 if the changes meet the criteria listed in the rule. In this case, the facility is responsible for monitoring all interventions – restraints or the alternative interventions—to make sure they do not cause decline in the resident’s functioning. Again, a decline is required to be reported to the resident’s physician for further guidance and assessment.*

No language has been added to the rule to address this potential ambiguity. Please amend the Rule accordingly.

The “administrator or their designee” added in (a)(4) and throughout to identify who would make the determination and for clarity.

In (c)(1), p.2, to be clear, the physician who issues the order under (a) is not part of the team? *The physician can participate, but it is not required. Adult care homes do not have Medical Directors like nursing homes. Many physicians of residents in adult care homes are in private practices in the community and do not have time to attend assessment and care plan meetings. Facility staff complete assessments and care plans, and those must be signed by the physician (rule .0802). In this rule, we have added that the order is based on the medical symptoms identified in the assessment and care plan. We recognize the importance of the physician being aware, so we have included items (4) and (5) to ensure the physician's involvement.*

While I think (4) and (5) are good policy, I also think they are substantial changes under G.S. 150B-21.2(g), in that they create an effect not contemplated by the published language of the Rule.

(c)(4) and (c)(5) have been removed.

In (d)(5), line 31, define an “emergency situation”. See also (a)(2) and (a)(5). *Done, definition added for emergency situation.*

The language added is “when a resident is in imminent danger and there is fear for their safety and well-being.” I have several questions:

In danger of what? Be specific.

Whose fear would justify this determination? A doctor? Family member?

“Well-being” is not used elsewhere in this Rule. How is it defined?

The definition for “emergency” has been included for clarity. The terms “danger” and “well-being” have been removed.

In (f), p.3, line 7, the Rule states that the staff applying restraints must be validated under Rule .504. Rule .0504 refers to the tasks in Rule .0903. Rule .0903(a)(17) is the only mention of restraints, and it says “the care of residents who are physically restrained and the use of care practices as alternatives to restraints.” Would applying restraints fall within “the care of residents who are restrained”? *Yes*

In the changes you made to (f), please add “have” prior to “been” on line 24.

Done.

1 10A NCAC 13F .0702 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .0702 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- 9 (1) ~~the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
11 (2) ~~the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
13 (3) ~~the safety of other individuals in the facility is endangered;~~
14 (4) ~~the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~
16 (5) ~~failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~
18 (6) ~~the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- 21 (1) ~~the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~
23 (2) ~~reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- 26 (1) ~~documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~
28 (2) ~~the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~
31 (3) ~~written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~
33 (4) ~~the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications;~~

32 ~~(F) a record of the resident's vaccinations and TB screening;~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner~~
 27 ~~[practitioner;] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner;] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered;] endangered as~~
 32 ~~determined by the facility in consultation with the resident's physician, physician assistant, or nurse~~
 33 ~~practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner;] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The facility shall assure the following requirements for written notice are met before discharging a resident:

6 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 7 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 8 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 9 of Health Benefits, on the internet website [https://policies.ncdhhs.gov/divisional/health-benefits-nc-](https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms)
 10 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

11 (A) the date of notice;

12 (B) the date of transfer or discharge;

13 (C) the reason for the notice;

14 (D) the name of responsible person or contact person notified;

15 (E) the planned discharge location;

16 (F) the appeal rights;

17 (G) the contact information for the long-term care ombudsman; and

18 (H) the signature and date of the administrator.

19 (2) A copy of the completed Adult Care Home Notice of Discharge [with a copy of the] and Adult Care
 20 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 21 mail to the resident's responsible person or legal representative and the individual identified upon
 22 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 23 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 24 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 25 to medical, social, or other personal information of the resident; manage financial matters; or receive
 26 notifications. The Adult Care Home Hearing Request Form shall include the following:

27 (A) the name of the resident;

28 (B) the name of the facility;

29 (C) the date of transfer or discharge;

30 (D) the date of scheduled transfer or discharge;

31 (E) the selection of how the hearing is to be conducted;

32 (F) the name of the person requesting the hearing; and

33 (G) for the person requesting the hearing, their relationship to the resident, address,

34 telephone number, their signature, and date of the request.

35 (3) Provide the following material in accordance with the Health Insurance Portability and
 36 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative;]

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
 11 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
 12 record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

15 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 16 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 17 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

18 (2) reasons under Subparagraphs [(b)(2), (b)(3); (b)(3)] and (b)(4) of this Rule exist.

19 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 20 discharge [locations:] locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 21 Information which is hereby incorporated by reference, including any amendments and subsequent editions:

22 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 23 Paragraph (b) of this Rule:

24 (A) documentation by physician, physician assistant or nurse practitioner as required in
 25 Paragraph (b) of this Rule;

26 (B) the condition or circumstance that endangers the health or safety of the resident being
 27 discharged or endangers the health or safety of individuals in the facility, and the facility's
 28 action taken to address the problem prior to pursuing discharge of the resident;

29 (C) written notices of warning of discharge for failure to pay the costs of services and
 30 accommodations; or

31 (D) the specific health need or condition of the resident that the [facility] administrator or their
 32 designee determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and
 33 as disclosed in the resident contract signed upon the resident's admission to the facility;
 34 and

35 (2) any known [intervention] involvement of law enforcement with the resident due to threatening
 36 behavior or violence toward self or others.

1 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 2 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 3 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
 4 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
 5 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
 6 record.

7 (g) The [facility] administrator or their designee shall provide sufficient preparation and orientation to residents to
 8 ensure a safe and orderly discharge from the facility as evidenced by:

9 (1) explaining to the resident and responsible person or legal representative and the individual identified
 10 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 11 is necessary;

12 (2) informing the resident and responsible person or legal representative and the individual identified
 13 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 14 appropriate discharge [destination;] destination that is capable of meeting the needs of the resident;
 15 and

16 (A) If at the time of the discharge notice the discharge destination is unknown or [is not
 17 appropriate for] is not capable of meeting the needs of the resident, the facility shall contact
 18 the local adult care home resident discharge team as defined in G.S. 131D-4.8(e) to assist
 19 with placement; and

20 (B) The facility shall inform the [resident and] resident, the resident’s legal [representative]
 21 representative, the individual identified upon admission to receive a copy of the discharge
 22 notice on behalf of the resident, and the responsible person of their right to request the
 23 Regional Long-Term Care Ombudsman to serve as a member of the adult care home
 24 resident discharge [team;] team; and

25 (3) offering the following material to the [caregiver] resident, the resident’s legal representative, or the
 26 facility [with whom] where the resident is to be placed and providing this material as requested prior
 27 to or upon discharge of the resident:

28 (A) a copy of the resident's most current [FL-2;] FL-2 form required in Rule .0703 of this
 29 Subchapter;

30 (B) a copy of the resident's most current assessment and care plan;

31 (C) a list of referrals to licensed health professionals, including mental health;

32 (D) a copy of the resident's current physician orders;

33 (E) a list of the resident's current medications;

34 (F) the resident's current medications; and

35 (G) a record of the resident's vaccinations and TB screening;

36 (4) providing written notice of the name, address and telephone number of the following, if not provided
 37 on the discharge notice required in Paragraph (c) of this Rule:

1 (A) the regional long-term care ombudsman; and

2 (B) Disability Rights of North Carolina, the protection and advocacy agency established under
3 federal law for persons with disabilities;

4 (5) providing the resident, responsible ~~party~~ person, or legal ~~representative~~ representative, and the
5 individual identified upon admission who received a copy of the discharge notice on behalf of the
6 resident with the discharge location as determined by the adult care home resident discharge team,
7 if convened, at or before the discharge hearing, if the location is known to the facility.

8 (h) If an appeal hearing is requested:

9 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
10 ~~person, and~~ person, the Hearing Unit copies of all documents and records that the facility intends
11 to use at the hearing at least five working days prior to the scheduled hearing; and

12 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
13 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

14 (i) If a discharge is initiated by the ~~resident~~ resident, the resident's legal representative, or responsible person, the
15 administrator may require up to a 14-day written notice from the ~~resident~~ resident, the resident's legal representative,
16 or responsible person which means the resident ~~or responsible person~~ may be charged for the days of the required
17 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
18 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
19 safety of the resident or others in the facility. The facility's requirement for a notice from the ~~resident~~ resident, the
20 resident's legal representative, or responsible person shall be established in the resident contract ~~or the house rules~~
21 provided to the resident or responsible person upon admission.

22 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
23 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
24 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
25 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
26 requirements in this Rule apply.

27
28 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; 131D-4.8; 131D-21; 143B-165;*
29 *Eff. January 1, 1977;*
30 *Readopted Eff. October 31, 1977;*
31 *Temporary Amendment Eff. July 1, 2003;*
32 *Amended Eff. July 1, 2004. 2004:*
33 *Readopted Eff. [October 1, 2023.] April 1, 2024.*
34

1 10A NCAC 13G .0705 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13G .0705 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

9 ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

11 ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

13 ~~(3) the safety of other individuals in the facility is endangered;~~

14 ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~

16 ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~

18 ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

21 ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~

23 ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

26 ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~

28 ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~

31 ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~

33 ~~(4) the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications; and~~

32 ~~(F) a record of the resident's vaccinations and TB screening.~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility at the direction of the administrator or their designee shall be~~
 24 ~~based on one of the following [reasons under G.S. 131D-4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse~~
 27 ~~[practitioner:] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner:] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered:] endangered as~~
 32 ~~determined by the facility in consultation with the resident's physician, physician assistant, or nurse~~
 33 ~~practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner:] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The facility shall assure the following requirements for written notice are met before discharging a resident:

6 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 7 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 8 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 9 of Health Benefits, on the internet website [https://policies.ncdhhs.gov/divisional/health-benefits-nc-](https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms)
 10 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

11 (A) the date of notice;

12 (B) the date of transfer or discharge;

13 (C) the reason for the notice;

14 (D) the name of responsible person or contact person notified;

15 (E) the planned discharge location;

16 (F) the appeal rights;

17 (G) the contact information for the long-term care ombudsman; and

18 (H) the signature and date of the administrator.

19 (2) A copy of the completed Adult Care Home Notice of Discharge [with a copy of the] and Adult Care
 20 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 21 mail to the resident's responsible person or legal representative and the individual identified upon
 22 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 23 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 24 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 25 to medical, social, or other personal information of the resident; manage financial matters; or receive
 26 notifications. The Adult Care Home Hearing Request Form shall include the following:

27 (A) the name of the resident;

28 (B) the name of the facility;

29 (C) the date of transfer or discharge;

30 (D) the date of scheduled transfer or discharge;

31 (E) the selection of how the hearing is to be conducted;

32 (F) the name of the person requesting the hearing; and

33 (G) for the person requesting the hearing, their relationship to the resident, address, telephone
 34 number, their signature, and date of the request.

35 (3) Provide the following material in accordance with the Health Insurance Portability and
 36 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative;]

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
 11 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
 12 record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

15 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 16 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 17 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

18 (2) reasons under Subparagraphs [(b)(2), (b)(3); (b)(3)] and (b)(4) of this Rule exist.

19 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 20 discharge [locations; locations pursuant to the HIPAA Standards for Privacy of Individually Identifiable Health
 21 Information which is hereby incorporated by reference, including any amendments and subsequent editions:

22 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 23 Paragraph (b) of this Rule:

24 (A) documentation by physician, physician assistant or nurse practitioner as required in
 25 Paragraph (b) of this Rule;

26 (B) the condition or circumstance that endangers the health or safety of the resident being
 27 discharged or endangers the health or safety of individuals in the facility, and the facility's
 28 action taken to address the problem prior to pursuing discharge of the resident;

29 (C) written notices of warning of discharge for failure to pay the costs of services and
 30 accommodations; or

31 (D) the specific health need or condition of the resident that the [facility] administrator or their
 32 designee determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and
 33 as disclosed in the resident contract signed upon the resident's admission to the facility;
 34 and

35 (2) any known [intervention] involvement of law enforcement with the resident due to threatening
 36 behavior or violence toward self or others.

1 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 2 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 3 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the
 4 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
 5 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
 6 record.

7 (g) The [facility] administrator or their designee shall provide sufficient preparation and orientation to residents to
 8 ensure a safe and orderly discharge from the facility as evidenced by:

9 (1) explaining to the resident and responsible person or legal representative and the individual identified
 10 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 11 is necessary;

12 (2) informing the resident and responsible person or legal representative and the individual identified
 13 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 14 appropriate discharge destination; destination that is capable of meeting the needs of the resident;
 15 and

16 (A) If at the time of the discharge notice the discharge destination is unknown or [is not
 17 appropriate for] is not capable of meeting the needs of the resident, the facility shall contact
 18 the local adult care home resident discharge team as defined in G.S. 131D-4.8(e) to assist
 19 with placement; and

20 (B) The facility shall inform the [resident and] resident, the resident’s legal [representative]
 21 representative, the individual identified upon admission to receive a copy of the discharge
 22 notice on behalf of the resident, and the responsible person of their right to request the
 23 Regional Long-Term Care Ombudsman to serve as a member of the adult care home
 24 resident discharge [team:] team; and

25 (3) offering the following material to the [caregiver] resident, the resident’s legal representative, or the
 26 facility [with whom] where the resident is to be placed and providing this material as requested prior
 27 to or upon discharge of the resident:

28 (A) a copy of the resident's most current [FL-2;] FL-2 form required in Rule .0703 of this
 29 Subchapter;

30 (B) a copy of the resident's most current assessment and care plan;

31 (C) a list of referrals to licensed health professionals, including mental health;

32 (D) a copy of the resident's current physician orders;

33 (E) a list of the resident's current medications;

34 (F) the resident's current medications; and

35 (G) a record of the resident's vaccinations and TB screening;

36 (4) providing written notice of the name, address and telephone number of the following, if not provided
 37 on the discharge notice required in Paragraph (c) of this Rule:

1 (A) the regional long-term care ombudsman; and

2 (B) Disability Rights of North Carolina, the protection and advocacy agency established under
3 federal law for persons with disabilities.

4 (5) providing the resident, responsible party person, or legal representative representative, and the
5 individual identified upon admission who received a copy of the discharge notice on behalf of the
6 resident with the discharge location as determined by the adult care home resident discharge team,
7 if convened, at or before the discharge hearing, if the location is known to the facility.

8 (h) If an appeal hearing is requested:

9 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
10 ~~person, and~~ person, the Hearing Unit copies of all documents and records that the facility intends
11 to use at the hearing at least five working days prior to the scheduled hearing; and

12 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
13 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

14 (i) If a discharge is initiated by the resident resident, the resident's legal representative, or responsible person, the
15 administrator may require up to a 14-day written notice from the resident resident, the resident's legal representative,
16 or responsible person which means the resident or responsible person may be charged for the days of the required
17 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
18 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
19 safety of the resident or others in the facility. The facility's requirement for a notice from the resident resident, the
20 resident's legal representative, or responsible person shall be established in the resident contract or the house rules
21 provided to the resident or responsible person upon admission.

22 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
23 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
24 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
25 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
26 requirements in this Rule apply.

27
28 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
29 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
30 *Eff. April 1, 2001;*
31 *Temporary Amendment Eff. July 1, 2003;*
32 *Amended Eff. July 1, 2004. 2004;*
33 *Readopted Eff. [October 1, 2023.] April 1, 2024.*

1 10A NCAC 13G .1301 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

4
5 **10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which that~~ restricts freedom of movement or normal
8 access to one's body, shall be:

- 9 (1) used only in those circumstances in which the resident has medical symptoms for which the
10 resident's physician or physician extender has determined ~~that~~ warrant the use of restraints and not
11 for ~~discipline~~ ~~[discipline, behavioral crisis intervention,]~~ discipline or convenience purposes;
12 (2) used only with a written order from a physician or physician extender except in emergencies where
13 the health or safety of the resident is threatened, according to Paragraph ~~(e)~~ (d) of this Rule;
14 (3) the least restrictive restraint that would ~~provide safety;~~ provide a safe environment for the resident
15 and prevent harm; physical injury;
16 (4) used only after alternatives that would provide ~~safety to prevent harm to a safe environment for~~ the
17 resident to prevent physical injury and prevent a potential decline in the resident's functioning have
18 been tried and documented by the administrator or their designee in the resident's ~~record.~~ record as
19 being unsuccessful.
20 (5) used only after an assessment and care planning process has been completed, except in ~~emergencies,~~
21 emergencies where the health or safety of the resident is threatened, according to Paragraph ~~(d)~~ (c)
22 of this Rule;
23 (6) applied correctly according to the manufacturer's instructions and the physician's or physician
24 extenders' order; and
25 (7) used in conjunction with alternatives in an effort to reduce restraint use. For the purpose of this Rule,
26 "physician extender" means a licensed physician assistant or licensed nurse practitioner.

27 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
28 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
29 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
30 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
31 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
32 providing supportive devices such as wedge cushions.

33 (b) The facility shall ask obtain written consent from the ~~resident or resident, the~~ resident's responsible person, or
34 legal representative if the resident may for the resident to be restrained based on an order from the resident's physician.
35 physician or physician extender. The facility shall inform the resident, resident, the resident's responsible person or
36 legal representative of the reason for the ~~request and request,~~ the benefits of restraint use use, and the negative
37 outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse

1 restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the
 2 resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint
 3 use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

4 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
 5 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or ~~depression~~ depression, and reduced social
 6 contact.

7 (c) In addition to the requirements in Rule ~~13F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
 8 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
 9 (a)(5) of this Rule shall meet the following requirements:

10 (1) The assessment and care planning shall be implemented through a team process with the team
 11 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
 12 resident's responsible person or legal representative. If the resident or resident's responsible person
 13 or legal representative is unable to participate, there shall be documentation in the resident's record
 14 that they were notified and declined the invitation or were unable to attend.

15 (2) The assessment shall include consideration of the following:

- 16 (A) medical symptoms that warrant the use of a restraint;
- 17 (B) how the medical symptoms affect the resident;
- 18 (C) when the medical symptoms were first observed;
- 19 (D) how often the symptoms occur;
- 20 (E) alternatives that have been provided and the resident's response; and
- 21 (F) the least restrictive type of physical restraint that would provide safety.

22 (3) The care plan shall include the following:

- 23 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
 24 reduce restraint time once the resident is restrained;
- 25 (B) the type of restraint to be used; and
- 26 (C) care to be provided to the resident during the time the resident is restrained.

27 ~~(4) The resident assessment and care plan for the use of a restraint shall be provided to the physician or
 28 physician extender for evaluation prior to the physician or physician extender writing an order for a
 29 restraint.~~

30 ~~(5) The resident assessment and care plan for the use of a restraint shall be signed by the physician or
 31 physician extender within 15 days of the date of the assessment.~~

32 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

33 (1) The order shall indicate:

- 34 (A) the medical need for the ~~restraint~~; restraint based on the assessment and care plan;
- 35 (B) the type of restraint to be used;
- 36 (C) the period of time the restraint is to be used; and

- 1 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
 2 minutes for checks and **no longer than** two hours for releases.
- 3 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
 4 the resident's physician **or physician extender** of the order within seven days.
- 5 (3) The restraint order shall be updated by the resident's physician **or physician extender** at least every
 6 three months following the initial order.
- 7 (4) If the resident's physician changes, the physician **or physician extender** who is to attend the resident
 8 shall update and sign the existing order.
- 9 (5) In **an emergency situations, situations an emergency, where the health or safety of the resident is**
 10 **threatened,** the administrator or **administrator in charge their designee** shall make the determination
 11 relative to the need for a restraint and its type and duration of use until a physician **or physician**
 12 **extender** is contacted. Contact with a physician **or physician extender** shall be made within 24 hours
 13 and documented in the resident's record. **For the purpose of this Rule, an "emergency" ["emergency**
 14 **situation"] means [when a resident is in imminent danger and there is fear for their safety and well-**
 15 **being-] a situation where there is a certain risk of physical injury or death to a resident.**
- 16 (6) The restraint order shall be kept in the resident's record.
- 17 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
 18 record and include the following:
- 19 (1) restraint alternatives that were provided and the resident's response;
 20 (2) type of restraint that was used;
 21 (3) medical symptoms warranting restraint use;
 22 (4) the time the restraint was applied and the duration of restraint use;
 23 (5) care that was provided to the resident during restraint use; and
 24 (6) behavior of the resident during restraint use.
- 25 (f) Physical restraints shall be applied only by staff who have received training **on the use of alternatives to physical**
 26 **restraint use and on the care of residents who are physically restrained** according to Rule .0506 of this Subchapter and
 27 **have** been validated on **restraint use, the care of residents who are physically restrained and the use of care practices**
 28 **as alternatives to restraints** according to Rule .0504 of this Subchapter.

29
 30 *History Note: Authority G.S. 131D-2.16; 143B-165;*
 31 *Temporary Adoption Eff. July 1, 2004;*
 32 *Temporary Adoption Expired March 12, 2005;*
 33 *Eff. June 1, 2005- 2005;*
 34 *Readopted Eff. [October 1, 2023.] April 1, 2024.*

35

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>

Sent: Thursday, November 2, 2023 10:55 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Corpening, Taylor <taylor.corpening@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Thank you Brian! We will get these revisions made and back to you no later than 11/8/23.

-Shalisa

Shalisa Reynolds Jones, MSW

Regulatory Analyst

[Division of Health Service Regulation, Adult Care Licensure Section](#)

[NC Department of Health and Human Services](#)

Office/Mobile: [704-589-6214](tel:704-589-6214)

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Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, November 2, 2023 10:34 AM
To: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Taylor,

Thanks for the revisions. I will recommend approval of 13F .1307. For the others, I have a few follow ups:

With respect to the statutory authority issue I raised in 13F .0702 and 13G .0705, it appears there's a conflict between 131D-4.8 and 131D-21. Since we have to read statutes in harmony to the extent we can, and 131D-21 came later and gives MCC specific rulemaking authority, I think it controls. So, that's to say I think that resolves the statutory authority issue in MCC's favor.

13F .0702/13G .0705

In (c)(3)(A), line 13, what is a FL-2? This is the medical examination form required to be completed prior to admission and annually by Rule .0703.

I looked at Rule .0703, and it doesn't state the substantive requirements or contents of the FL-2 form. Is there another rule or statute that provides the substantive requirements or contents of the form?

In (d), line 23, who makes the determination that it is now "practicable" to make the notice? The facility would make that determination once they identify that the resident's health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.

I'm a little uncomfortable with "the facility" making these decisions. This is an issue throughout the Rule. For instance, in (a), the Rule refers to discharges initiated "by the facility". Who at the facility would make these decisions?

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident's "record" and provided to discharge locations "upon request." However, 131D-21(6) states that information in the resident's "personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law." Is there an applicable State or federal law? It's not cited in the Rule or the History Note. Paragraph (e) is covered under HIPAA in which Adult care facilities are "covered entities" as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose "protected health information" for purposes of "treatment, payment, or health care operations." We have included the reference to the applicable law in the history note.

I don't see a change to the History Note. If it's a federal regulation, rather than a law, I think you'll need to incorporate it by reference in the body of the Rule, pursuant to 150B-21.6.

In (e)(2), line 4, what is an "intervention"? Any time law enforcement has had to intervene in a situation involving a resident. Example: law enforcement is called by a facility due to a resident threatening to harm another resident and law enforcement comes to the facility to intervene.

Does it mean that law enforcement simply arrives and speaks to the resident? Does it mean that the resident is detained or arrested? There's a spectrum of actions that a law enforcement officer can take upon being called, and I just wonder where "intervention" is on that spectrum.

In (g)(2), line 19, please define "appropriate". An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment.

This makes sense, but the Rule doesn't say that. Please amend the Rule.

In (g)(2)(A), line 20-21, please define "not appropriate". An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment – this would be an inappropriate discharge location. Occasionally, adult care homes will indicate on the discharge form that the discharge location is "the hospital" or "the homeless shelter." These are not appropriate discharge locations.

This makes sense, but the Rule doesn't say that. Please amend the Rule.

13G .1301

In (a)(1), line 9, who determines that the resident has medical symptoms warranting the use of restraints? The physician who has to write the order? Please clarify in the Rule. (a)(1) updated to include "for which the resident's physician or physician extender has determined" Physician extender also defined in (a)(7) for clarity.

It looks like an additional change was made to (a)(1), to add "behavioral crisis intervention" to the list of things restraints may not be used for. Where did this change come from? Is it not a substantial change?

In (a)(3), line 13, who determines what constitutes "safety"? What standards are used to determine that a restraint provides "safety"? A resident's needs are determined through the assessment and care planning process defined in rules .0801 and .0802. A facility is to provide care and supervision to a resident in accordance with their assessment, care plan and current symptoms (rule .0901). The assessment, which is completed by facility staff and signed by the resident's physician, may identify conditions that pose a safety risk to a resident. The facility is responsible, with direction and orders from the physician, to put interventions and services in place to assure the resident's safety and prevent harm. (a)(3) changed from provide safety to "provide a safe environment for the resident and prevent harm"

If I understand, it appears that the "safe" part of the "safe environment" is at least partially determined according to the assessment and care plan, which is created by facility staff and a physician. But what about safety issues that arise outside of that context? Who makes that determination? Regardless of the answer, no language has been added to the rule to address this potential ambiguity. Please amend the Rule accordingly.

One change that was made to both (3) and (4) is to add the modifier "prevent harm". Please define "harm", as that is a very broad and subjective term.

In (a)(4), lines 14-15, who determines what prevents a potential decline in the resident's functioning, and what standards are used to make that determination? Adult care home staff work with residents daily and observe them for changes in condition, including changes in their functional abilities, mood and behavior. Facility staff are required to report changes in a resident's condition to the resident's physician (rule .0902b) and may also be required to complete a "significant change assessment" per rule .0801 if the changes meet the criteria listed in the rule. In this case, the facility is responsible for monitoring all interventions – restraints or the alternative interventions—to make sure they do not cause decline in the resident's functioning. Again, a decline is required to be reported to the resident's physician for further guidance and assessment.

No language has been added to the rule to address this potential ambiguity. Please amend the Rule accordingly.

In (c)(1), p.2, to be clear, the physician who issues the order under (a) is not part of the team? The physician can participate, but it is not required. Adult care homes do not have Medical Directors like nursing homes. Many physicians of residents in adult care homes are in private practices in the community and do not have time to attend assessment and care plan meetings. Facility staff complete assessments and care plans, and those must be signed by the physician (rule .0802). In this rule, we have added that the order is based on the medical symptoms identified in the assessment and care plan. We recognize the importance of the physician being aware, so we have included items (4) and (5) to ensure the physician's involvement.

While I think (4) and (5) are good policy, I also think they are substantial changes under G.S. 150B-21.2(g), in that they create an effect not contemplated by the published language of the Rule.

In (d)(5), line 31, define an "emergency situation". See also (a)(2) and (a)(5). Done, definition added for emergency situation.

The language added is "when a resident is in imminent danger and there is fear for their safety and well-being." I have several questions:

In danger of what? Be specific.

Whose fear would justify this determination? A doctor? Family member?

"Well-being" is not used elsewhere in this Rule. How is it defined?

In (f), p.3, line 7, the Rule states that the staff applying restraints must be validated under Rule .504. Rule .0504 refers to the tasks in Rule .0903. Rule .0903(a)(17) is the only mention of restraints, and it says "the care of residents who are physically restrained and the use of care practices as alternatives to restraints." Would applying restraints fall within "the care of residents who are restrained"? Yes

In the changes you made to (f), please add "have" prior to "been" on line 24.

Please return revised rules to me **no later than 5 PM on Wednesday, November 8.**

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G
Attachments: 10A NCAC 13F .0702.docx; 10A NCAC 13F .1307.docx; 10A NCAC 13G .0705.docx; 10A NCAC 13G .1301.docx; 09.2023 - Medical Care Commission 13F and 13G Request for Changes-Responses.docx

From: Corpening, Taylor <taylor.corpening@dhhs.nc.gov>
Sent: Wednesday, November 1, 2023 11:06 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>
Subject: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Brian,

Attached are the updated 10A NCAC 13F .0703 and .1307 and 10A NCAC 13G .0705 and .1301 rules as well as written responses to your requested changes. Please note that the effective date has changed for these four rules to allow for additional changes and staff training required to prepare for the implementation of these updated rules.

Please let me know if you have any questions.

Thanks,

Taylor Corpening
Rule-making Coordinator
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

Office: 919-855-4619
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Burgos, Alexander N

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Sent: Wednesday, November 1, 2023 11:06 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>
Subject: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Brian,

Attached are the updated 10A NCAC 13F .0703 and .1307 and 10A NCAC 13G .0705 and .1301 rules as well as written responses to your requested changes. Please note that the effective date has changed for these four rules to allow for additional changes and staff training required to prepare for the implementation of these updated rules.

Please let me know if you have any questions.

Thanks,

Taylor Corpening
Rule-making Coordinator
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

Office: 919-855-4619
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taylor.corpening@dhhs.nc.gov

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

**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13A .0201 **This is not our rule and must have been sent to us in error.**

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Throughout the Rule, please delete instances of "(s)" and just use the plural or use both the plural and singular ("rule or rules", for instance).

In (a), line 7, add a colon or the word "the" between "addressed to" and "Office of the Director".

In (b)(1), what should someone submit if they're requesting repeal of a rule?

In (b)(2), line 13, what "orders" are you referring to?

In (c)(4), line 24, what qualifies as a "description"? I'm assuming this means, for instance, if someone wants to repeal a rule for long term care homes, that the petitioner should say "residents of long term care homes"?

In (d)(2), line 31, add a comma after "programs".

In (d)(5), line 34, how is the "public interest" determined?

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13F .0702

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), p.3, the list is, except for (6), verbatim from the statute. As repeating statutory language is generally unnecessary under G.S. 150B-19(4), please consider deleting this and just referring to G.S. 131D-4.8(a). Added additional language in (b)(1) to clarify documentation “in the resident’s record”. Within the scope of our authority, repeating the statute is necessary in the rule so that we can accurately reflect the purpose of the discharge. The additional reference and repeat of the language provide clarity and is useful to providers.

Throughout (b), when referring to “documented” or “documentation” does this mean in the resident’s medical record? In other words, where is this information to be documented, and how? Yes, this means in the resident record. Medical providers can either document directly into the resident’s record or write a note or order and send it to the facility (fax or some other secure method) to be placed in the resident’s record. This currently how all documentation from a medical or other type of provider is handled. We have included the phrase, “in the resident’s record” into the rule.

In (b)(1) and (2), what if there is a conflict as to the resident’s needs between the physician, the physician’s assistant, or the nurse practitioner? For instance, what if the NP says that the facility can no longer meet the resident’s needs, but the physician disagrees? Only one of these providers must document that the resident’s needs can no longer be met in the facility. We included the three types of practitioners as these are the most common individuals who provide these types of orders/documentation. This typically occurs when a resident needs a higher level of care, such as skilled nursing.

In (b)(3), line 30, who determines whether the resident’s or other individual’s safety is endangered? According to what standards? Added, “as determined by the facility in consultation with the resident’s physician, physician assistance, or nurse practitioner” This is typically a result of a resident’s aggressive or violent behaviors.

In (b)(6), line 36, the Rule seems to narrow the grounds for discharge specified in the statute. In 131D-4.8(a)(6), the discharge may be mandated “under [Article 1], Article

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Commission Counsel

Date submitted to agency: August 22, 2023

3 of this Chapter, or rules adopted by the Medical Care Commission.” In the Rule, the discharge may only be mandated under G.S. 131D-2.2(a). While this statute is indeed in Article 1 of 131D, it appears the Rule eliminates any discharges under Article 3 or other MCC rules. I am not sure that MCC has the authority to narrow the statutorily described criteria for discharge. Please address.

We have removed item (6) as it is covered under (a). These are conditions that cannot be cared for in an adult care home unless a physician certifies that they can be for a temporary amount of time. If they cannot be, then the physician would be documenting this in the resident’s record and is a reason for discharge.

In (c)(1), p.4, line 1, the rule references a “Notice of Discharge” and a “Hearing Request Form”. Is the Notice of Discharge a form? If so, are its contents or substantive requirements described in a statute or another rule? Same question for the Hearing Request Form – are its contents or substantive requirements described in a statute or another rule?

The contents of these forms were added in the rule.

In (c)(2), line 8, please define “responsible person”. A definition for responsible person has been added.

In (c)(3), line 12, was “responsible person” omitted intentionally, given its use elsewhere? I believe so since this is for when the facility is releasing protected health information. It was omitted because it was not the legal party, but we have included the individual identified “...” to receive that information.

In (c)(3)(A), line 13, what is a FL-2? This is the medical examination form required to be completed prior to admission and annually by Rule .0703.

In (c)(4), lines 16-17, the Rule states that failure to use the latest version of the forms described in (c)(1) and (2) shall not invalidate the discharge. If the facility fails to use the latest version of the form, then must it make any attempt to update the resident/responsible person/legal representative with any information that would be on the latest form, but not in the form used? We have deleted this sentence. Providers should use the current forms. They are readily available on the DHHS website.

In (c)(5), to be clear, is the Hearing Request Form completed by the facility? Yes, the top portion of the form is completed by the facility and another part by the resident/family member/legal representative.

Where is your statutory authority for (d)? G.S. 131D-4.8(b) states:

An adult care home shall notify a resident, the resident’s legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at least 30 days before the resident is discharged. 131D-21(17)

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Commission Counsel

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I don't see any statutory exemptions to this language, and Subparagraph (b) of this Rule, which is referenced in (d)(1) and (2), uses the language of the relevant portions of subsection (a) of 131D-4.8 verbatim.

§ 131D-21. Declaration of residents' rights.

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer protections to residents for safe and orderly transfer and discharge.

With respect to (d)(2), line 26, to the extent that there is a statutory exemption to the 30 day notice provision in 131D-4.8(b), can you use the improvement of the health of the resident (Subparagraph (b)(2) of the Rule, 131D-4.8(a)(2) in the statute) as a grounds for waiving the notice? G.S. 131D-21(17) states:

The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home.

It doesn't seem to me that the improving health of the resident poses "jeopardy to the health and safety of the resident or others in the home." In fact, it would seem to me that 131D-21(17) is directly aimed at forbidding a home from declaring the resident medically improved and then suddenly leaving him or her without a place to go.

Agree, deleted (b)(2) from this item. This situation would necessitate a 30-day notice of discharge.

In (d), line 23, who makes the determination that it is now "practicable" to make the notice? The facility would make that determination once they identify that the resident's health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.

In (d)(1), line 24, to the extent the 30 day notice provision may be waived, wouldn't it be clearer just to say that the home does not need to comply with the 30 day requirement if the discharge is pursuant to Subparagraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule? Or, to directly reference the equivalent statutory language? Here, in (d)(1), you say "the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under subparagraph (b)(1)". Subparagraph (b)(1) and the

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statute use slightly different language (“protect the welfare” as opposed to “health or safety is endangered”). I think this introduces some ambiguity as to whether these are different standards. Changed to directly reference the equivalent of (b)(1) and the statute.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident’s “record” and provided to discharge locations “upon request.” However, 131D-21(6) states that information in the resident’s “personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law.” Is there an applicable State or federal law? It’s not cited in the Rule or the History Note. Paragraph (e) is covered under HIPAA in which Adult care facilities are “covered entities” as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose “protected health information” for purposes of “treatment, payment, or health care operations.”. We have included the reference to the applicable law in the history note.

In (e)(1)(d), p.5, line 3, I’m unsure what the language “and as disclosed in the resident contract signed upon the resident’s admission to the facility” means in this context. Please explain and clarify the language of the Rule. Adult care homes may determine that there are certain conditions or health needs for which they will not provide services. These conditions and needs must be included in the facility’s admission contract so residents/families/legal representatives are aware upon admission (or before). If a resident develops the need for one of the services not provided by the facility (as indicated in the contract), the facility may provide the resident with a 30 day discharge notice. An example would be that a facility may not offer specialized/therapeutic diets (such as a “No Concentrated Sweets” (diabetic) diet or a calorie restricted diet).

In (e)(2), line 4, what is an “intervention”? Any time law enforcement has had to intervene in a situation involving a resident. Example: law enforcement is called by a facility due to a resident threatening to harm another resident and law enforcement comes to the facility to intervene.

In (g), line 12, is “sufficient preparation and orientation” defined by (1)-(5)? Yes.

In (g)(2), line 19, please define “appropriate”. An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment.

In (g)(2)(A), line 20-21, please define “not appropriate”. An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment – this would be an inappropriate discharge location. Occasionally, adult care homes will indicate on the discharge form

Brian Liebman
Commission Counsel

Date submitted to agency: August 22, 2023

that the discharge location is “the hospital” or “the homeless shelter.” These are not appropriate discharge locations.

In (g)(2)(A), line 21, what is the “local adult care home resident discharge team”? The team is described in 131D-4.8(e), included the reference in the rule it now states: “the local adult care home resident discharge team as defined in G.S. 131D-4.8(e)”

In (g)(2)(B), line 23, was “responsible person” and “individual identified upon admission to receive a copy of the discharge notice on behalf of the resident” omitted intentionally? No. They have been added.

In (g)(3), line 26, would the resident/legal representative/responsible person need to sign a release for this information to be provided to the caregiver? This seems to include medical and personal records covered by 131D-21(6) which must be kept confidential. We have removed the term “caregiver” and replaced with the resident, resident’s legal representative, or the facility where the resident is to be placed for clarity as they would all be covered under HIPPA to be authorized to receive medical and personal records.

In (g)(3)(F), line 33, is the facility required to provide the actual medications themselves? Yes, the facility has possession of residents’ medications and is responsible for managing and administering those medications. However, medications are the property of the resident and have been purchased by the resident with their money/insurance benefits. So, when a resident is discharged, the facility must release all of the resident’s medications to the resident and/or whomever will be caring for the resident. Frequently, this is another adult care home or a nursing home.

In (g)(4)(B), p.6, line 1, what “agency” are you referring to? Disability Rights North Carolina. It has been added to the rule.

In (g)(5), line 3, add a comma following “representative”. Done

In (g)(5), line 3, is “responsible party” different than “responsible person” used elsewhere? Yes, changed “responsible party” to “responsible person”

In (i), line 13, was “legal representative” intentionally omitted? Added legal representative

In (i), lines 16-17, to be clear, this exception refers to discharges or transfers for health or safety reasons that are initiated by the resident, rather than the facility, correct? Yes, this paragraph refers to discharges initiated by the resident/resident’s representative.

In (j), line 21, what is a “bed hold policy”? Is there a rule or statute that requires one? Rule 10A NCAC 13F .1106 Settlement of Cost of Care sets forth the requirements for adult care homes when determining the costs of care when a resident leaves the facility temporarily (such as for a hospitalization or short-term rehabilitation stay) and intends to return to the facility. Most, if not all, facilities have a “bed hold policy” that addresses this situation, including when and how the facility will hold/reserve the resident’s room and what the associated costs will be for the facility to hold that room

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while the resident is not in the facility. The bed hold policy must be in compliance with Rule .1106. Facilities are not required to have a bed hold policy.

In (j), lines 22-24, is a discharge where there is no physician documented level of care change possible? It doesn't seem to fit under any of the circumstances in (b). Yes, even if a resident is sent to a hospital or inpatient psychiatric hospital, their level of care may stay the same (adult care home level of care).

*In your History Note, is the duplicate reference to G.S. 131D-4.5 supposed to be a reference to G.S. 131D-4.8? *History note updated**

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13F .1307

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 4, what are you requiring with the word "assure"? The facility is required to do these things. Amended the language to clarify.

Why is G.S. 131D-8 cited here? I don't see a connection between the rule language and the statute. Removed reference to this statute.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13G .0705

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

NOTE: As this Rule is—to my reading—identical to 13F .0702, the change requests herein are also identical to those for that Rule.

In (b), p.3, the list is, except for (6), verbatim from the statute. As repeating statutory language is generally unnecessary under G.S. 150B-19(4), please consider deleting this and just referring to G.S. 131D-4.8(a). Added additional language in (b)(1) to clarify documentation “in the resident’s record”. Within the scope of our authority, repeating the statute is necessary in the rule so that we can accurately reflect the purpose of the discharge. The additional reference and repeat of the language provide clarity and is useful to providers.

Throughout (b), when referring to “documented” or “documentation” does this mean in the resident’s medical record? In other words, where is this information to be documented, and how? Yes, this means in the resident record. Medical providers can either document directly into the resident’s record or write a note or order and send it to the facility (fax or some other secure method) to be placed in the resident’s record. This currently how all documentation from a medical or other type of provider is handled. We have included the phrase, “in the resident’s record” into the rule.

In (b)(1) and (2), what if there is a conflict as to the resident’s needs between the physician, the physician’s assistant, or the nurse practitioner? For instance, what if the NP says that the facility can no longer meet the resident’s needs, but the physician disagrees? Only one of these providers must document that the resident’s needs can no longer be met in the facility. We included the three types of practitioners as these are the most common individuals who provide these types of orders/documentation. This typically occurs when a resident needs a higher level of care, such as skilled nursing.

In (b)(3), line 30, who determines whether the resident’s or other individual’s safety is endangered? According to what standards? Added, “as determined by the facility in consultation with the resident’s physician, physician assistance, or nurse practitioner” This is typically a result of a resident’s aggressive or violent behaviors.

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In (b)(6), line 36, the Rule seems to narrow the grounds for discharge specified in the statute. In 131D-4.8(a)(6), the discharge may be mandated “under [Article 1], Article 3 of this Chapter, or rules adopted by the Medical Care Commission.” In the Rule, the discharge may only be mandated under G.S. 131D-2.2(a). While this statute is indeed in Article 1 of 131D, it appears the Rule eliminates any discharges under Article 3 or other MCC rules. I am not sure that MCC has the authority to narrow the statutorily described criteria for discharge. Please address.

We have removed item (6) as it is covered under (a). These are conditions that cannot be cared for in an adult care home unless a physician certifies that they can be for a temporary amount of time. If they cannot be, then the physician would be documenting this in the resident’s record and is a reason for discharge.

In (c)(1), p.4, line 1, the rule references a “Notice of Discharge” and a “Hearing Request Form”. Is the Notice of Discharge a form? If so, are its contents or substantive requirements described in a statute or another rule? Same question for the Hearing Request Form – are its contents or substantive requirements described in a statute or another rule?

The contents of these forms were added in the rule.

In (c)(2), line 8, please define “responsible person”. A definition for responsible person has been added.

In (c)(3), line 12, was “responsible person” omitted intentionally, given its use elsewhere? I believe so since this is for when the facility is releasing protected health information. It was omitted because it was not the legal party, but we have included the individual identified “...” to receive that information.

In (c)(3)(A), line 13, what is a FL-2? This is the medical examination form required to be completed prior to admission and annually by Rule .0703.

In (c)(4), lines 16-17, the Rule states that failure to use the latest version of the forms described in (c)(1) and (2) shall not invalidate the discharge. If the facility fails to use the latest version of the form, then must it make any attempt to update the resident/responsible person/legal representative with any information that would be on the latest form, but not in the form used? We have deleted this sentence. Providers should use the current forms. They are readily available on the DHHS website.

In (c)(5), to be clear, is the Hearing Request Form completed by the facility? Yes, the top portion of the form is completed by the facility and another part by the resident/family member/legal representative.

Where is your statutory authority for (d)? G.S. 131D-4.8(b) states:

An adult care home shall notify a resident, the resident’s legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this

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section, in writing, at least 30 days before the resident is discharged. 131D-21(17)

I don't see any statutory exemptions to this language, and Subparagraph (b) of this Rule, which is referenced in (d)(1) and (2), uses the language of the relevant portions of subsection (a) of 131D-4.8 verbatim.

§ 131D-21. Declaration of residents' rights.

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer protections to residents for safe and orderly transfer and discharge.

With respect to (d)(2), line 26, to the extent that there is a statutory exemption to the 30 day notice provision in 131D-4.8(b), can you use the improvement of the health of the resident (Subparagraph (b)(2) of the Rule, 131D-4.8(a)(2) in the statute) as a grounds for waiving the notice? G.S. 131D-21(17) states:

The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home.

It doesn't seem to me that the improving health of the resident poses "jeopardy to the health and safety of the resident or others in the home." In fact, it would seem to me that 131D-21(17) is directly aimed at forbidding a home from declaring the resident medically improved and then suddenly leaving him or her without a place to go. Agree, deleted (b)(2) from this item. This situation would necessitate a 30-day notice of discharge.

In (d), line 23, who makes the determination that it is now "practicable" to make the notice? The facility would make that determination once they identify that the resident's health or safety is endangered, and their urgent medical needs cannot be met. The facility is expected to provide the notice as soon as practicable to protect the welfare of the resident.

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In (d)(1), line 24, to the extent the 30 day notice provision may be waived, wouldn't it be clearer just to say that the home does not need to comply with the 30 day requirement if the discharge is pursuant to Subparagraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule? Or, to directly reference the equivalent statutory language? Here, in (d)(1), you say "the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under subparagraph (b)(1)". Subparagraph (b)(1) and the statute use slightly different language ("protect the welfare" as opposed to "health or safety is endangered"). I think this introduces some ambiguity as to whether these are different standards. Changed to directly reference the equivalent of (b)(1) and the statute.

Is (e) in conflict with 131D-21(6)? The information referenced in (e)(1) and (2) are to be documented in the resident's "record" and provided to discharge locations "upon request." However, 131D-21(6) states that information in the resident's "personal and medical records [are to be] kept confidential and not disclosed excepts as permitted or required by applicable State or federal law." Is there an applicable State or federal law? It's not cited in the Rule or the History Note. Paragraph (e) is covered under HIPAA in which Adult care facilities are "covered entities" as defined by 45 CFR 160.103. As a result, adult care facilities are subject to and must comply with HIPAA and the HIPAA Privacy Rule. Covered entities, including adult care facilities, may use or disclose "protected health information" for purposes of "treatment, payment, or health care operations.". We have included the reference to the applicable law in the history note.

In (e)(1)(d), p.5, line 3, I'm unsure what the language "and as disclosed in the resident contract signed upon the resident's admission to the facility" means in this context. Please explain and clarify the language of the Rule. Adult care homes may determine that there are certain conditions or health needs for which they will not provide services. These conditions and needs must be included in the facility's admission contract so residents/families/legal representatives are aware upon admission (or before). If a resident develops the need for one of the services not provided by the facility (as indicated in the contract), the facility may provide the resident with a 30 day discharge notice. An example would be that a facility may not offer specialized/therapeutic diets (such as a "No Concentrated Sweets" (diabetic) diet or a calorie restricted diet).

In (e)(2), line 4, what is an "intervention"? Any time law enforcement has had to intervene in a situation involving a resident. Example: law enforcement is called by a facility due to a resident threatening to harm another resident and law enforcement comes to the facility to intervene.

In (g), line 12, is "sufficient preparation and orientation" defined by (1)-(5)? Yes.

In (g)(2), line 19, please define "appropriate". An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment.

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In (g)(2)(A), line 20-21, please define “not appropriate”. An appropriate discharge destination is a location/placement that can/will meet the needs of the resident. For example, an adult care home cannot discharge a resident who requires a secure memory care unit to an independent living apartment – this would be an inappropriate discharge location. Occasionally, adult care homes will indicate on the discharge form that the discharge location is “the hospital” or “the homeless shelter.” These are not appropriate discharge locations.

In (g)(2)(A), line 21, what is the “local adult care home resident discharge team”? The team is described in 131D-4.8(e), included the reference in the rule it now states: “the local adult care home resident discharge team as defined in G.S. 131D-4.8(e)”

In (g)(2)(B), line 23, was “responsible person” and “individual identified upon admission to receive a copy of the discharge notice on behalf of the resident” omitted intentionally? No. They have been added.

In (g)(3), line 26, would the resident/legal representative/responsible person need to sign a release for this information to be provided to the caregiver? This seems to include medical and personal records covered by 131D-21(6) which must be kept confidential. We have removed the term “caregiver” and replaced with the resident, resident’s legal representative, or the facility where the resident is to be placed for clarity as they would all be covered under HIPPA to be authorized to receive medical and personal records.

In (g)(3)(F), line 33, is the facility required to provide the actual medications themselves? Yes, the facility has possession of residents’ medications and is responsible for managing and administering those medications. However, medications are the property of the resident and have been purchased by the resident with their money/insurance benefits. So, when a resident is discharged, the facility must release all of the resident’s medications to the resident and/or whomever will be caring for the resident. Frequently, this is another adult care home or a nursing home.

In (g)(4)(B), p.6, line 1, what “agency” are you referring to? Disability Rights North Carolina. It has been added to the rule.

In (g)(5), line 3, add a comma following “representative”. Done

In (g)(5), line 3, is “responsible party” different than “responsible person” used elsewhere? Yes, changed “responsible party” to “responsible person”

In (i), line 13, was “legal representative” intentionally omitted? Added legal representative

In (i), lines 16-17, to be clear, this exception refers to discharges or transfers for health or safety reasons that are initiated by the resident, rather than the facility, correct? Yes, this paragraph refers to discharges initiated by the resident/resident’s representative.

In (j), line 21, what is a “bed hold policy”? Is there a rule or statute that requires one? Rule 10A NCAC 13F .1106 Settlement of Cost of Care sets forth the requirements for adult care homes when determining the costs of care when a resident leaves the facility

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Date submitted to agency: August 22, 2023

temporarily (such as for a hospitalization or short-term rehabilitation stay) and intends to return to the facility. Most, if not all, facilities have a “bed hold policy” that addresses this situation, including when and how the facility will hold/reserve the resident’s room and what the associated costs will be for the facility to hold that room while the resident is not in the facility. The bed hold policy must be in compliance with Rule .1106. Facilities are not required to have a bed hold policy.

In (j), lines 22-24, is a discharge where there is no physician documented level of care change possible? It doesn’t seem to fit under any of the circumstances in (b). Yes, even if a resident is sent to a hospital or inpatient psychiatric hospital, their level of care may stay the same (adult care home level of care).

In your History Note, is the duplicate reference to G.S. 131D-4.5 supposed to be a reference to G.S. 131D-4.8? History note updated

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Care Commission

RULE CITATION: 10A NCAC 13G .1301

DEADLINE FOR RECEIPT: Tuesday, September 5, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a)(1), line 9, who determines that the resident has medical symptoms warranting the use of restraints? The physician who has to write the order? Please clarify in the Rule. (a)(1) updated to include “for which the resident’s physician or physician extender has determined” Physician extender also defined in (a)(7) for clarity.

In (a)(2), line 11 and (a)(5), line 16, please define what constitutes an “emergency”. See also (d)(5). An emergency would be a situation where the health or safety of the resident or other residents is threatened. This language has been added to the rule (d)(5).

In (a)(2), line 11, I think the reference to paragraph (e) should be to paragraph (d). Correction made.

In (a)(3), line 13, who determines what constitutes “safety”? What standards are used to determine that a restraint provides “safety”? A resident’s needs are determined through the assessment and care planning process defined in rules .0801 and .0802. A facility is to provide care and supervision to a resident in accordance with their assessment, care plan and current symptoms (rule .0901). The assessment, which is completed by facility staff and signed by the resident’s physician, may identify conditions that pose a safety risk to a resident. The facility is responsible, with direction and orders from the physician, to put interventions and services in place to assure the resident’s safety and prevent harm. (a)(3) changed from provide safety to “provide a safe environment for the resident and prevent harm”

In (a)(4) and in (a)(7), are the “alternatives” referenced here the ones discussed in the Note at the end of (a)? Yes, the note includes examples or alternatives- added “as being unsuccessful” for clarity.

In (a)(4), lines 14-15, who determines what prevents a potential decline in the resident’s functioning, and what standards are used to make that determination? Adult care home staff work with residents daily and observe them for changes in condition, including changes in their functional abilities, mood and behavior. Facility staff are

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required to report changes in a resident's condition to the resident's physician (rule .0902b) and may also be required to complete a "significant change assessment" per rule .0801 if the changes meet the criteria listed in the rule. In this case, the facility is responsible for monitoring all interventions – restraints or the alternative interventions—to make sure they do not cause decline in the resident's functioning. Again, a decline is required to be reported to the resident's physician for further guidance and assessment.

In (a)(5), line 17, I think the reference to paragraph (d) should be to paragraph (c). Done

In the Notes at the end of (a) and (b), is this language provided only for illustrative purposes? Yes. This is to provide additional guidance to facilities.

In the Note after (a), line 21, there is an extra space following the colon. Removed

In (b), line 26, was the "responsible person" intentionally omitted? Added responsible person.

In (b), line 26, just to be clear, before putting a resident in restraints, the facility has to ask the resident for consent? Yes, if they are able to consent. If not, the facility must ask the resident's representative.

In (b), line 28, delete the "and" following "request" and add a comma. Also add a comma following "use". Done

In the note following (b), line 34, add a comma following "depression". Done

In (c)(1), p.2, to be clear, the physician who issues the order under (a) is not part of the team? The physician can participate, but it is not required. Adult care homes do not have Medical Directors like nursing homes. Many physicians of residents in adult care homes are in private practices in the community and do not have time to attend assessment and care plan meetings. Facility staff complete assessments and care plans, and those must be signed by the physician (rule .0802). In this rule, we have added that the order is based on the medical symptoms identified in the assessment and care plan. We recognize the importance of the physician being aware, so we have included items (4) and (5) to ensure the physician's involvement.

It appears that some of the language and requirements in (c) are the same as those in (a). Are the requirements of (a) met through complying with the assessment requirements in (c)? The requirements in (c) ensure that the facility is in compliance with the requirements of (a). The requirements in (a) are general requirements pertaining to the use of restraints. (c) puts a process in place to ensure that the facility has considered all of these factors to ensure the safety and well-being of the resident.

In (d)(1)(D), line 24, to be clear, the resident may only be released from restraints for two hours at a time? No, this rule is saying that, if a restraint is being used on a resident, the facility must check on that resident at least every 30 minutes and must release the resident from the restraint every two hours. The physician may order shorter

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intervals for the facility to check on the resident or to release the restraint, but they cannot order longer intervals.

In (d)(5), line 31, define an “emergency situation”. See also (a)(2) and (a)(5). Done, definition added for emergency situation.

In (f), p.3, line 7, the Rule states that the staff applying restraints must be validated under Rule .504. Rule .0504 refers to the tasks in Rule .0903. Rule .0903(a)(17) is the only mention of restraints, and it says “the care of residents who are physically restrained and the use of care practices as alternatives to restraints.” Would applying restraints fall within “the care of residents who are restrained”? Yes

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

1 10A NCAC 13F .0702 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .0702 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- 9 (1) ~~the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
11 (2) ~~the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
13 (3) ~~the safety of other individuals in the facility is endangered;~~
14 (4) ~~the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~
16 (5) ~~failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~
18 (6) ~~the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- 21 (1) ~~the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~
23 (2) ~~reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- 26 (1) ~~documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~
28 (2) ~~the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~
31 (3) ~~written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~
33 (4) ~~the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications;~~

32 ~~(F) a record of the resident's vaccinations and TB screening;~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period.. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following [reasons under G.S.~~
 24 ~~131D 4.8:] reasons:~~

25 ~~(1) — the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner~~
 27 ~~[practitioner;] practitioner in the resident's record;~~

28 ~~(2) — the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner;] practitioner in the resident's record;~~

31 ~~(3) — the safety of the resident or other individuals in the facility is [endangered;] endangered as~~
 32 ~~determined by the facility in consultation with the resident's physician, physician assistant, or nurse~~
 33 ~~practitioner;~~

34 ~~(4) — the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner;] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident's contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The facility shall assure the following requirements for written notice are met before discharging a resident:

6 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 7 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 8 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 9 of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc->
 10 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

11 (A) the date of notice;

12 (B) the date of transfer or discharge;

13 (C) the reason for the notice;

14 (D) the name of responsible person or contact person notified;

15 (E) the planned discharge location;

16 (F) the appeal rights;

17 (G) the contact information for the long-term care ombudsman; and

18 (H) the signature and date of the administrator.

19 (2) A copy of the completed Adult Care Home Notice of Discharge [with a copy of the] and Adult Care
 20 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 21 mail to the resident's responsible person or legal representative and the individual identified upon
 22 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 23 Home Notice of Discharge is dated. For the purposes of this Rule "responsible person" means a
 24 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 25 to medical, social, or other personal information of the resident; manage financial matters; or receive
 26 notifications. The Adult Care Home Hearing Request Form shall include the following:

27 (A) the name of the resident;

28 (B) the name of the facility;

29 (C) the date of transfer or discharge;

30 (D) the date of scheduled transfer or discharge;

31 (E) the selection of how the hearing is to be conducted;

32 (F) the name of the person requesting the hearing; and

33 (G) for the person requesting the hearing, their relationship to the resident, address,

34 telephone number, their signature, and date of the request.

35 (3) Provide the following material in accordance with the Health Insurance Portability and
 36 Accountability Act of 1996 (HIPAA) to the resident and the resident's legal [representative;]

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
 11 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
 12 record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

15 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 16 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 17 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

18 (2) reasons under Subparagraphs [(b)(2), (b)(3), (b)(3)] and (b)(4) of this Rule exist.

19 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 20 discharge locations:

21 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 22 Paragraph (b) of this Rule:

23 (A) documentation by physician, physician assistant or nurse practitioner as required in
 24 Paragraph (b) of this Rule;

25 (B) the condition or circumstance that endangers the health or safety of the resident being
 26 discharged or endangers the health or safety of individuals in the facility, and the facility's
 27 action taken to address the problem prior to pursuing discharge of the resident;

28 (C) written notices of warning of discharge for failure to pay the costs of services and
 29 accommodations; or

30 (D) the specific health need or condition of the resident that the facility determined could not
 31 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 32 contract signed upon the resident's admission to the facility; and

33 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
 34 toward self or others.

35 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 36 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 37 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the

1 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
 2 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
 3 record.

4 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
 5 from the facility as evidenced by:

6 (1) explaining to the resident and responsible person or legal representative and the individual identified
 7 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 8 is necessary;

9 (2) informing the resident and responsible person or legal representative and the individual identified
 10 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 11 appropriate discharge destination; and

12 (A) If at the time of the discharge notice the discharge destination is unknown or is not
 13 appropriate for the resident, the facility shall contact the local adult care home resident
 14 discharge team as defined in G.S. 131D-4.8(e) to assist with placement; and

15 (B) The facility shall inform the ~~resident and~~ resident, the resident’s legal ~~representative~~
 16 representative, the individual identified upon admission to receive a copy of the discharge
 17 notice on behalf of the resident, and the responsible person of their right to request the
 18 Regional Long-Term Care Ombudsman to serve as a member of the adult care home
 19 resident discharge ~~team;~~ team; and

20 (3) offering the following material to the ~~caregiver~~ resident, the resident’s legal representative, or the
 21 facility ~~[with whom]~~ where the resident is to be placed and providing this material as requested prior
 22 to or upon discharge of the resident:

23 (A) a copy of the resident's most current ~~[FL-2;]~~ FL-2 form required in Rule .0703 of this
 24 Subchapter;

25 (B) a copy of the resident's most current assessment and care plan;

26 (C) a list of referrals to licensed health professionals, including mental health;

27 (D) a copy of the resident's current physician orders;

28 (E) a list of the resident's current medications;

29 (F) the resident's current medications; and

30 (G) a record of the resident's vaccinations and TB screening;

31 (4) providing written notice of the name, address and telephone number of the following, if not provided
 32 on the discharge notice required in Paragraph (c) of this Rule:

33 (A) the regional long-term care ombudsman; and

34 (B) Disability Rights of North Carolina, the protection and advocacy agency established under
 35 federal law for persons with disabilities;

36 (5) providing the resident, responsible ~~party~~ person, or legal ~~representative~~ representative, and the
 37 individual identified upon admission who received a copy of the discharge notice on behalf of the

1 resident with the discharge location as determined by the adult care home resident discharge team,
 2 if convened, at or before the discharge hearing, if the location is known to the facility.

3 (h) If an appeal hearing is requested:

4 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
 5 [person, and] person, the Hearing Unit copies of all documents and records that the facility intends
 6 to use at the hearing at least five working days prior to the scheduled hearing; and

7 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
 8 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

9 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 10 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 11 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 12 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 13 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 14 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 15 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 16 provided to the resident or responsible person upon admission.

17 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 18 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 19 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
 20 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
 21 requirements in this Rule apply.

22
 23 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; 131D-4.8; 131D-21; 143B-165;*
 24 *Eff. January 1, 1977;*
 25 *Readopted Eff. October 31, 1977;*
 26 *Temporary Amendment Eff. July 1, 2003;*
 27 *Amended Eff. July 1, 2004. 2004;*
 28 *Readopted Eff. [October 1, 2023.] April 1, 2024.*
 29

1 10A NCAC 13F .1307 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN**

4 In addition to the requirements in Rules ~~13F .0801~~ and ~~13F .0802~~ of this Subchapter, the facility ~~shall assure the~~
5 ~~following:~~ shall:

6 (1) Within 30 days of admission to the special care unit and quarterly thereafter, ~~the facility shall~~
7 develop a written resident profile containing assessment data that describes the resident's behavioral
8 patterns, self-help abilities, level of daily living skills, special management needs, physical abilities
9 and disabilities, and degree of cognitive impairment.

10 (2) ~~The resident care plan as required in Rule 13F .0802 of this Subchapter shall be developed or revised~~
11 Develop or revise the resident's care plan required in Rule .0802 of this Subchapter based on the
12 resident profile and specify programming that involves environmental, social and health care
13 strategies to help the resident attain or maintain the maximum level of functioning possible and
14 compensate for lost abilities.

15
16 *History Note:* Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; ~~131D-8;~~ 143B-165;

17 *Temporary Adoption Eff. December 1, 1999;*

18 *Eff. July 1, ~~2000~~ 2000;*

19 *Readopted Eff. [~~October 1, 2023;~~ April 1, 2024.*

20

1 10A NCAC 13G .0705 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **10A NCAC 13G .0705 DISCHARGE OF RESIDENTS**

4 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
5 ~~Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
6 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
7 ~~the resident based on the facility's bed hold policy.~~

8 ~~(b) The discharge of a resident shall be based on one of the following reasons:~~

9 ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the~~
10 ~~facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

11 ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided~~
12 ~~by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~

13 ~~(3) the safety of other individuals in the facility is endangered;~~

14 ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician~~
15 ~~assistant or nurse practitioner;~~

16 ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the~~
17 ~~resident contract after receiving written notice of warning of discharge for failure to pay; or~~

18 ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

19 ~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility~~
20 ~~at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

21 ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met~~
22 ~~in the facility under Subparagraph (b)(1) of this Rule; or~~

23 ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

24 ~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more~~
25 ~~of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

26 ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b)~~
27 ~~of this Rule;~~

28 ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or~~
29 ~~endangers the health or safety of individuals in the facility, and the facility's action taken to address~~
30 ~~the problem prior to pursuing discharge of the resident;~~

31 ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations;~~
32 ~~or~~

33 ~~(4) the specific health need or condition of the resident that the facility determined could not be met in~~
34 ~~the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the~~
35 ~~resident's admission to the facility.~~

36 ~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

1 ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall~~
 2 ~~be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home~~
 3 ~~Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical~~
 4 ~~Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

5 ~~(2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing~~
 6 ~~Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the~~
 7 ~~resident's responsible person or legal representative on the same day the Adult Care Home Notice~~
 8 ~~of Discharge is dated.~~

9 ~~(3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and~~
 10 ~~(e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms~~
 11 ~~shall not invalidate the discharge unless the facility has been previously notified of a change in the~~
 12 ~~forms and been provided a copy of the latest forms by the Department of Health and Human~~
 13 ~~Services.~~

14 ~~(4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing~~
 15 ~~Request Form as completed by the facility prior to giving to the resident and a copy of the receipt~~
 16 ~~of hand delivery or the notification of certified mail delivery shall be maintained in the resident's~~
 17 ~~record.~~

18 ~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge~~
 19 ~~from the facility as evidenced by:~~

20 ~~(1) notifying staff in the county department of social services responsible for placement services;~~

21 ~~(2) explaining to the resident and responsible person or legal representative why the discharge is~~
 22 ~~necessary;~~

23 ~~(3) informing the resident and responsible person or legal representative about an appropriate discharge~~
 24 ~~destination; and~~

25 ~~(4) offering the following material to the caregiver with whom the resident is to be placed and providing~~
 26 ~~this material as requested prior to or upon discharge of the resident:~~

27 ~~(A) a copy of the resident's most current FL 2;~~

28 ~~(B) a copy of the resident's most current assessment and care plan;~~

29 ~~(C) a copy of the resident's current physician orders;~~

30 ~~(D) a list of the resident's current medications;~~

31 ~~(E) the resident's current medications; and~~

32 ~~(F) a record of the resident's vaccinations and TB screening.~~

33 ~~(5) providing written notice of the name, address and telephone number of the following, if not provided~~
 34 ~~on the discharge notice required in Paragraph (e) of this Rule:~~

35 ~~(A) the regional long term care ombudsman; and~~

36 ~~(B) the protection and advocacy agency established under federal law for persons with~~
 37 ~~disabilities.~~

1 ~~(g) If an appeal hearing is requested:~~

2 ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible~~
 3 ~~person, and the Hearing Unit copies of all documents and records that the facility intends to use at~~
 4 ~~the hearing at least five working days prior to the scheduled hearing; and~~

5 ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has~~
 6 ~~been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

7 ~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day~~
 8 ~~written notice from the resident or responsible person which means the resident or responsible person may be charged~~
 9 ~~for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of~~
 10 ~~the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would~~
 11 ~~jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the~~
 12 ~~resident or responsible person shall be established in the resident contract or the house rules provided to the resident~~
 13 ~~or responsible person upon admission.~~

14 ~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility~~
 15 ~~for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the~~
 16 ~~expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute~~
 17 ~~inpatient facility and there has been no physician documented level of care change for the resident, the discharge~~
 18 ~~requirements in this Rule apply.~~

19 ~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in~~
 20 ~~Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination~~
 21 ~~of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for~~
 22 ~~the resident based on the facility's bed hold policy.~~

23 ~~(b) The discharge of a resident initiated by the facility shall be based on one of the following [reasons under G.S.~~
 24 ~~131D 4.8:] reasons:~~

25 ~~(1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs~~
 26 ~~of the resident, as documented by the resident's physician, physician assistant, or nurse~~
 27 ~~[practitioner;] practitioner in the resident's record;~~

28 ~~(2) the health of the resident has improved sufficiently so that the resident is no longer in need of the~~
 29 ~~services provided by the facility, as documented by the resident's physician, physician assistant, or~~
 30 ~~nurse [practitioner;] practitioner in the resident's record;~~

31 ~~(3) the safety of the resident or other individuals in the facility is [endangered;] endangered as~~
 32 ~~determined by the facility in consultation with the resident's physician, physician assistant, or nurse~~
 33 ~~practitioner;~~

34 ~~(4) the health of the resident or other individuals in the facility is endangered as documented by a~~
 35 ~~physician, physician assistant, or nurse [practitioner;] practitioner in the resident's record;~~

1 (5) the resident has failed to pay the costs of services and accommodations by the payment due date
 2 according to the resident’s contract after receiving written notice of warning of discharge for failure
 3 to pay; or

4 ~~[(6) the discharge is mandated under G.S. 131D-2.2(a).]~~

5 (c) The facility shall assure the following requirements for written notice are met before discharging a resident:

6 (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall
 7 be completed and hand delivered, with receipt requested, to the resident on the same day the Adult
 8 Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division
 9 of Health Benefits, on the internet website [https://policies.ncdhhs.gov/divisional/health-benefits-nc-](https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms)
 10 medicaid/forms. The Adult Care Home Notice of Discharge shall include the following:

11 (A) the date of notice;

12 (B) the date of transfer or discharge;

13 (C) the reason for the notice;

14 (D) the name of responsible person or contact person notified;

15 (E) the planned discharge location;

16 (F) the appeal rights;

17 (G) the contact information for the long-term care ombudsman; and

18 (H) the signature and date of the administrator.

19 (2) A copy of the completed Adult Care Home Notice of Discharge [with a copy of the] and Adult Care
 20 Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified
 21 mail to the resident's responsible person or legal representative and the individual identified upon
 22 admission to receive a discharge notice on behalf of the resident on the same day the Adult Care
 23 Home Notice of Discharge is dated. For the purposes of this Rule “responsible person” means a
 24 person chosen by the resident to act on their behalf to support the resident in decision-making; access
 25 to medical, social, or other personal information of the resident; manage financial matters; or receive
 26 notifications. The Adult Care Home Hearing Request Form shall include the following:

27 (A) the name of the resident;

28 (B) the name of the facility;

29 (C) the date of transfer or discharge;

30 (D) the date of scheduled transfer or discharge;

31 (E) the selection of how the hearing is to be conducted;

32 (F) the name of the person requesting the hearing; and

33 (G) for the person requesting the hearing, their relationship to the resident, address, telephone
 34 number, their signature, and date of the request.

35 (3) Provide the following material in accordance with the Health Insurance Portability and
 36 Accountability Act of 1996 (HIPAA) to the resident and the resident’s legal [representative;]

1 representative and the individual identified upon admission to receive a copy the discharge notice
 2 on behalf of the resident:

3 (A) a copy of the resident's most current [FL-2; FL-2 form required in Rule .0703 of this
 4 Subchapter;

5 (B) a copy of the resident's current physician's orders, including medication order;

6 (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and
 7 (c)(2) of this Rule shall invalidate the discharge. [Failure to use the latest version of these forms
 8 shall not invalidate the discharge.]

9 (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing
 10 Request Form as completed by the facility prior to giving to the resident and a copy of the receipt
 11 of hand delivery or the notification of certified mail delivery shall be maintained in the resident's
 12 record.

13 (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility
 14 at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

15 (1) the [resident's health or safety is endangered and the resident's urgent medical needs cannot be met
 16 in the facility] discharge is necessary to protect the welfare of the resident and the facility cannot
 17 meet the needs of the resident under Subparagraph (b)(1) of this Rule; or

18 (2) reasons under Subparagraphs [(b)(2), (b)(3), (b)(3)] and (b)(4) of this Rule exist.

19 (e) The following shall be documented in the resident record and shall be made available upon request to potential
 20 discharge locations:

21 (1) The reason for discharge to include one or more of the following as applicable to the reasons under
 22 Paragraph (b) of this Rule:

23 (A) documentation by physician, physician assistant or nurse practitioner as required in
 24 Paragraph (b) of this Rule;

25 (B) the condition or circumstance that endangers the health or safety of the resident being
 26 discharged or endangers the health or safety of individuals in the facility, and the facility's
 27 action taken to address the problem prior to pursuing discharge of the resident;

28 (C) written notices of warning of discharge for failure to pay the costs of services and
 29 accommodations; or

30 (D) the specific health need or condition of the resident that the facility determined could not
 31 be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident
 32 contract signed upon the resident's admission to the facility; and

33 (2) any known intervention of law enforcement with the resident due to threatening behavior or violence
 34 toward self or others.

35 (f) The facility shall document contacts with possible discharge locations and responses and make available this
 36 documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive
 37 a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the

1 purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident”
 2 may be the same person as the resident’s legal representative or responsible person as identified in the resident’s
 3 record.

4 (g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge
 5 from the facility as evidenced by:

6 (1) explaining to the resident and responsible person or legal representative and the individual identified
 7 upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge
 8 is necessary;

9 (2) informing the resident and responsible person or legal representative and the individual identified
 10 upon admission to receive a copy of the discharge notice on behalf of the resident about an
 11 appropriate discharge destination; and

12 (A) If at the time of the discharge notice the discharge destination is unknown or is not
 13 appropriate for the resident, the facility shall contact the local adult care home resident
 14 discharge team as defined in G.S. 131D-4.8(e) to assist with placement; and

15 (B) The facility shall inform the [resident and] resident, the resident’s legal [representative]
 16 representative, the individual identified upon admission to receive a copy of the discharge
 17 notice on behalf of the resident, and the responsible person of their right to request the
 18 Regional Long-Term Care Ombudsman to serve as a member of the adult care home
 19 resident discharge [team:] team; and

20 (3) offering the following material to the [caregiver] resident, the resident’s legal representative, or the
 21 facility [with whom] where the resident is to be placed and providing this material as requested prior
 22 to or upon discharge of the resident:

23 (A) a copy of the resident's most current [FL-2:] FL-2 form required in Rule .0703 of this
 24 Subchapter;

25 (B) a copy of the resident's most current assessment and care plan;

26 (C) a list of referrals to licensed health professionals, including mental health;

27 (D) a copy of the resident's current physician orders;

28 (E) a list of the resident's current medications;

29 (F) the resident's current medications; and

30 (G) a record of the resident's vaccinations and TB screening;

31 (4) providing written notice of the name, address and telephone number of the following, if not provided
 32 on the discharge notice required in Paragraph (c) of this Rule:

33 (A) the regional long-term care ombudsman; and

34 (B) Disability Rights of North Carolina, the protection and advocacy agency established under
 35 federal law for persons with disabilities.

36 (5) providing the resident, responsible [party] person, or legal [representative] representative, and the
 37 individual identified upon admission who received a copy of the discharge notice on behalf of the

1 resident with the discharge location as determined by the adult care home resident discharge team,
 2 if convened, at or before the discharge hearing, if the location is known to the facility.

3 (h) If an appeal hearing is requested:

4 (1) the facility shall provide to the resident or legal representative or the resident and the responsible
 5 [person, and] person, the Hearing Unit copies of all documents and records that the facility intends
 6 to use at the hearing at least five working days prior to the scheduled hearing; and

7 (2) the facility shall not discharge the resident before the final decision resulting from the appeal has
 8 been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

9 (i) If a discharge is initiated by the [resident] resident, the resident's legal representative, or responsible person, the
 10 administrator may require up to a 14-day written notice from the [resident] resident, the resident's legal representative,
 11 or responsible person which means the resident [or responsible person] may be charged for the days of the required
 12 notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.
 13 Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or
 14 safety of the resident or others in the facility. The facility's requirement for a notice from the [resident] resident, the
 15 resident's legal representative, or responsible person shall be established in the resident contract [or the house rules]
 16 provided to the resident or responsible person upon admission.

17 (j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility
 18 for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the
 19 expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute
 20 inpatient facility and there has been no physician-documented level of care change for the resident, the discharge
 21 requirements in this Rule apply.

22
 23 *History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;*
 24 *Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
 25 *Eff. April 1, 2001;*
 26 *Temporary Amendment Eff. July 1, 2003;*
 27 *Amended Eff. July 1, 2004. 2004;*
 28 *Readopted Eff. [October 1, 2023.] April 1, 2024.*
 29

1 10A NCAC 13G .1301 is readopted with changes as published in 37:18 NCR 1874-1882 as follows:

2
3 **SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

4
5 **10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

6 (a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent
7 to the resident's body that the resident cannot remove easily and ~~which that~~ restricts freedom of movement or normal
8 access to one's body, shall be:

- 9 (1) used only in those circumstances in which the resident has medical symptoms for which the
10 resident's physician or physician extender has determined ~~that~~ warrant the use of restraints and not
11 for ~~discipline~~ discipline, behavioral crisis intervention, or convenience purposes;
- 12 (2) used only with a written order from a physician or physician extender except in emergencies where
13 the health or safety of the resident is threatened, according to Paragraph ~~(e)~~ (d) of this Rule;
- 14 (3) the least restrictive restraint that would provide safety; provide a safe environment for the resident
15 and prevent harm;
- 16 (4) used only after alternatives that would provide safety to prevent harm to the resident and prevent a
17 potential decline in the resident's functioning have been tried and documented in the resident's
18 ~~record~~ record as being unsuccessful;
- 19 (5) used only after an assessment and care planning process has been completed, except in ~~emergencies~~,
20 emergencies where the health or safety of the resident is threatened, according to Paragraph ~~(d)~~ (c)
21 of this Rule;
- 22 (6) applied correctly according to the manufacturer's instructions and the physician's or physician
23 extenders' order; and
- 24 (7) used in conjunction with alternatives in an effort to reduce restraint use. For the purpose of this Rule,
25 "physician extender" means a licensed physician assistant or licensed nurse practitioner.

26 Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing
27 mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance
28 abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed
29 lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering
30 fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and
31 providing supportive devices such as wedge cushions.

32 (b) The facility shall ~~ask~~ obtain written consent from the ~~resident or resident, the~~ resident's responsible person, or
33 legal representative ~~if the resident may~~ for the resident to be restrained based on an order from the resident's ~~physician.~~
34 physician or physician extender. The facility shall inform the ~~resident, resident, the resident's responsible person~~ or
35 legal representative of the reason for the ~~request and request~~, the benefits of restraint use use, and the negative
36 outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse
37 restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the

1 resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint
2 use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

3 Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability
4 to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression depression, and reduced social
5 contact.

6 (c) In addition to the requirements in Rule ~~13F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and
7 care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph
8 (a)(5) of this Rule shall meet the following requirements:

9 (1) The assessment and care planning shall be implemented through a team process with the team
10 consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the
11 resident's responsible person or legal representative. If the resident or resident's responsible person
12 or legal representative is unable to participate, there shall be documentation in the resident's record
13 that they were notified and declined the invitation or were unable to attend.

14 (2) The assessment shall include consideration of the following:

- 15 (A) medical symptoms that warrant the use of a restraint;
- 16 (B) how the medical symptoms affect the resident;
- 17 (C) when the medical symptoms were first observed;
- 18 (D) how often the symptoms occur;
- 19 (E) alternatives that have been provided and the resident's response; and
- 20 (F) the least restrictive type of physical restraint that would provide safety.

21 (3) The care plan shall include the following:

- 22 (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to
23 reduce restraint time once the resident is restrained;
- 24 (B) the type of restraint to be used; and
- 25 (C) care to be provided to the resident during the time the resident is restrained.

26 (4) The resident assessment and care plan for the use of a restraint shall be provided to the physician or
27 physician extender for evaluation prior to the physician or physician extender writing an order for a
28 restraint.

29 (5) The resident assessment and care plan for the use of a restraint shall be signed by the physician or
30 physician extender within 15 days of the date of the assessment.

31 (d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

32 (1) The order shall indicate:

- 33 (A) the medical need for the ~~restraint~~; restraint based on the assessment and care plan;
- 34 (B) the type of restraint to be used;
- 35 (C) the period of time the restraint is to be used; and
- 36 (D) the time intervals the restraint is to be checked and released, but no longer than every 30
37 minutes for checks and no longer than two hours for releases.

- 1 (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify
 2 the resident's physician or physician extender of the order within seven days.
- 3 (3) The restraint order shall be updated by the resident's physician or physician extender at least every
 4 three months following the initial order.
- 5 (4) If the resident's physician changes, the physician or physician extender who is to attend the resident
 6 shall update and sign the existing order.
- 7 (5) In emergency ~~situations~~, situations where the health or safety of the resident is threatened, the
 8 administrator or administrator-in-charge shall make the determination relative to the need for a
 9 restraint and its type and duration of use until a physician or physician extender is contacted. Contact
 10 with a physician or physician extender shall be made within 24 hours and documented in the
 11 resident's record. For the purpose of this Rule, "emergency situation" means when a resident is in
 12 imminent danger and there is fear for their safety and well-being.
- 13 (6) The restraint order shall be kept in the resident's record.

14 (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's
 15 record and include the following:

- 16 (1) restraint alternatives that were provided and the resident's response;
 17 (2) type of restraint that was used;
 18 (3) medical symptoms warranting restraint use;
 19 (4) the time the restraint was applied and the duration of restraint use;
 20 (5) care that was provided to the resident during restraint use; and
 21 (6) behavior of the resident during restraint use.

22 (f) Physical restraints shall be applied only by staff who have received training on the use of alternatives to physical
 23 restraint use and on the care of residents who are physically restrained according to Rule .0506 of this Subchapter and
 24 been validated on ~~restraint use, the care of residents who are physically restrained and the use of care practices as~~
 25 alternatives to restraints according to Rule .0504 of this Subchapter.

26
 27 *History Note:* Authority G.S. 131D-2.16; 143B-165;
 28 Temporary Adoption Eff. July 1, 2004;
 29 Temporary Adoption Expired March 12, 2005;
 30 Eff. June 1, 2005- 2005;
 31 Readopted Eff. [October 1, 2023.] April 1, 2024.
 32

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Sent: Wednesday, September 20, 2023 1:20 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Brian,

Yes, no interconnectivity issues with the rules. Thank you for asking.

Nadine Pfeiffer

Rules Review Manager

Division of Health Service Regulation

[NC Department of Health and Human Services](#)

Office: 919-855-3811

Fax: 919-733-2757

nadine.pfeiffer@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building

2701 Mail Service Center

Raleigh, NC 27699-2701

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Sent: Wednesday, September 20, 2023 1:20 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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Hi Brian,

Yes, no interconnectivity issues with the rules. Thank you for asking.

Nadine Pfeiffer

Rules Review Manager

Division of Health Service Regulation

[NC Department of Health and Human Services](#)

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nadine.pfeiffer@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building

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Raleigh, NC 27699-2701

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, September 20, 2023 12:52 PM

To: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Nadine,

I just wanted to check, there aren't any interconnectivity concerns with approving 13A .0201 and 13G .0504 and extending the rest, correct? I assume no, but want to be able to tell the Commission for sure.

Thanks!

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Submission of Permanent Rule RRC Changes – 10A NCAC 13A

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>
Sent: Friday, September 8, 2023 6:03 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Milliken, Emery <emery.milliken@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Submission of Permanent Rule RRC Changes – 10A NCAC 13A

Thank you, Brian!

Nadine Pfeiffer
Rules Review Manager
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

Office: 919-855-3811
Fax: 919-733-2757
nadine.pfeiffer@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building
2701 Mail Service Center
Raleigh, NC 27699-2701

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, September 8, 2023 11:06 AM
To: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>
Cc: Milliken, Emery <emery.milliken@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Submission of Permanent Rule RRC Changes – 10A NCAC 13A

Hi Nadine and Emery,

Thank you for the responses. I will recommend approval of this Rule at this month's meeting. Unless I hear an objection, I'll send the rule on to Alex and Dana as the final version for filing.

Have a great weekend,

Brian

Brian Liebman
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Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Sent: Thursday, August 31, 2023 3:24 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Thank you very much, Brian.

Nadine Pfeiffer

Rules Review Manager

Division of Health Service Regulation

[NC Department of Health and Human Services](#)

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Raleigh, NC 27699-2701

Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, August 31, 2023 3:01 PM

To: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Hi Nadine,

Thanks for letting me know. I will recommend to the Commission that they approve the extension at next month's meeting.

Best,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

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Burgos, Alexander N

Subject: FW: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>

Sent: Thursday, August 31, 2023 12:28 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Lamphere, Megan <megan.lamphere@dhhs.nc.gov>; Kinsey, Libby <libby.kinsey@dhhs.nc.gov>

Subject: Request for Extension of the Period of Review - 10A NCAC 13F and 13G

Brian,

On behalf of the N.C. Medical Care Commission, in accordance with Rule 26 NCAC 05 .0115, this is a request to extend the period of review to the November 16, 2023 Rules Review Commission meeting to address the change requests issued by you on August 23, 2023 for these four rules: 10A NCAC 13F .0702 and .1307; and 10A NCAC 13G .0705 and .1301.

Because no change requests were asked of Rule 10A NCAC 13G .0504, the agency does not want to extend the period of review for that Rule. There is no interconnectivity between this Rule and the four rules we are requesting to extend the period of review on.

Should the agency choose to have the rules reviewed at the first regularly scheduled meeting following the extension, a written notice will be submitted to you.

Please let me know if this extension is approved for those four rules.

Thank you.

Nadine Pfeiffer

Rules Review Manager

Division of Health Service Regulation

[NC Department of Health and Human Services](#)

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Burgos, Alexander N

From: Pfeiffer, Nadine
Sent: Tuesday, August 22, 2023 5:27 PM
To: Liebman, Brian R
Cc: Milliken, Emery; Jones, Shalisa R; Burgos, Alexander N
Subject: RE: 10A NCAC 13F and 13G Request for Changes - September 2023 RRC

Thank you, Brian.

Nadine Pfeiffer
Rules Review Manager
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

Office: 919-855-3811
Fax: 919-733-2757
nadine.pfeiffer@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building
2701 Mail Service Center
Raleigh, NC 27699-2701

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, August 22, 2023 5:23 PM
To: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>
Cc: Milliken, Emery <emery.milliken@dhhs.nc.gov>; Jones, Shalisa R <shalisa.jones@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 10A NCAC 13F and 13G Request for Changes - September 2023 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by MCC for the September 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, September 21, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Tuesday, September 5, 2023. Please note I had no questions on 13G .0504.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission
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