

July 28, 2022

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Office of the Director
Division of Health Service Regulation
N.C. Department of Health and Human Services
2701 Mail Service Center
Raleigh, North Carolina 27699-2701
VIA US MAIL and EMAIL: mark.payne@dhhs.nc.gov

Re: Petition for Rulemaking Regarding North Carolina Nursing Pool Agencies

Dear Director Payne:

On behalf of the nearly 400 skilled nursing facility members of the North Carolina Health Care Facilities Association (“NCHCFA”), we submit the following Petition for Rulemaking (“Petition”) pursuant to 10A N.C.A.C. 13A .0201. The purpose of this Petition is to ask the North Carolina Medical Care Commission (“MCC”) to amend and enhance existing rules set forth at 10A N.C.A.C. 13L .0101 *et seq.* governing North Carolina’s nursing pool agencies, which are enforced by the Department of Health and Human Services (the “Department”) through its Division of Health Service Regulation (“DHSR” or “Division”). These regulations and the MCC’s rulemaking authority are pursuant to the Nursing Pool Licensure Act, N.C. Gen. Stat. section 131E-154.1 to 154.8, and the specific authority for rulemaking is in N.C. Gen. Stat. section 131E-154.4.

Consistent with 10A NCAC 13A .0201(b), which governs petitions for rulemaking involving the MCC, we present the following information regarding the contents¹ of the proposed rules and the reasons for this rulemaking request, the effect this proposal would have on existing rules, data supporting the proposal, the effect this proposal would have on existing practices in the areas involved, and information on those most likely to be affected.

A Draft of the Proposed Rule

¹ We have prepared draft rule text for the additions and amendments (“Attachment 1”), though we ask the MCC to consider the spirit of the request as overarching and ask that the MCC disregard or edit the proposed rule text if needed to allow this Petition for rulemaking.

We are requesting that the MCC amend existing regulations set forth at 10A N.C.A.C. 13L .0101 *et seq.* to clarify and to require the following of nursing pool agencies licensed under N.C. Gen. Stat. section 131E-154.1 to 154.8. In summary, we are requesting that the amended rules require that nursing pool agencies:

1. Document that each temporary nursing staff member (nurses, nurse aides, etc.) provided to health care facilities be an employee of the agency and not an independent contractor.
2. Maintain insurance coverage for workers' compensation for all nurses, nurse aides, and the like provided by the agency and provide certain minimum levels of professional and general liability coverage.
3. File with the Division: (i) the name and address of the bank, savings bank, or savings association in which the nursing pool agency deposits all employee income tax withholdings; and (ii) the name and address of any nurse, nurse aide or other employee whose income is derived from placement by the agency, if the agency purports the income is not subject to withholding.
4. Not restrict in any manner the employment opportunities of the nursing pool agency's employees.
5. Not, in any contract with any employee or health care facility, require the payment of liquidated damages, employment fees, or other compensation should the employee of the nursing pool agency be hired as a permanent employee of a health care facility.
6. Retain all records for five calendar years. All records of the nursing pool agency must be immediately available to the Division.
7. Maintain written procedures for meeting health care facility requests for nursing personnel, including the pool's usual minimum notice time before nursing personnel can be assigned and procedures for assigning back-up nursing personnel if an initial assignment is not fulfilled.
8. Establish a procedure for annually assessing the performance of nursing personnel it assigns to a health care facility, including at a minimum: (A) a review of and response to any facility complaints about nursing pool personnel; (B) a record of nursing pool staff's reliability in fulfilling assignments; and (C) on-site assessments of personnel placed in health care facilities.
9. Establish a procedure for annually assessing the nursing pool's performance under the terms of its written agreements developed with health care facilities to which the nursing pool assigns personnel. This review should include at a minimum: (1) reports on complaints from contracting health care facilities and their resolution; and (2) a record of responses to requests for assignment of personnel to health care facilities. The results of this assessment should be considered by the Division in deciding whether to renew a nursing pool's license.
10. Provide the services of nursing personnel to health care facilities only under the terms of a written agreement with the facility.
11. Include in those written agreements the following, at a minimum:
 - a. The types and qualifications of nursing personnel available for assignment through the nursing pool agency;
 - b. Any requirement for minimum advance notice by a health care facility in order to assure prompt arrival of assigned personnel;
 - c. All fees and their duration including, but not limited to:
 - i. Any fees charged to the health care facility for nursing pool staff travel time, including when such fees are assessed, whether they are separately charged to the health care facility or are embedded into or included within a flat or hourly

- charge to the health care facility, and any minimum distance requirements from the nursing pool employee's home to a health care facility that must exist before such charges may be assessed;
 - ii. Any overtime charges which may be assessed to the health care facility under the written agreement including the specific situations in which such overtime charges may be assessed (e.g., when any single employee works for a contracted facility in excess of 40 hours in any individual week or when all nursing pool staff assigned to a health care facility combined work in excess of 40 hours in any individual week);
 - d. The pool's procedures for investigation and resolution of complaints about the performance of personnel assigned including interviews with the personnel who may be the subject of the complaint, and other relevant witnesses;
 - e. The pool's procedures for receiving and responding to notices from health care facilities of failure of personnel to report to assignments and for back-up staff in such instances;
 - f. The pool's procedures for providing notice to health care providers of actual or suspected abuse, theft, tampering or other diversion of controlled substances by nursing pool personnel which shall include, at a minimum, that the administrator (or designee) of the health care facility shall be immediately notified; and
 - g. Maintain a program for monitoring the quality of the nursing pool's performance which may include questionnaires or other surveys of health care facilities with which the nursing pool has written agreements.
12. Report on their annual license renewal applications the rate at which requested shifts from health care facilities are filled:
- a. At least 90 days prior to license expiration, the licensee shall submit an attestation detailing the number of contracted shifts, number of shifts missed, and number of shifts fulfilled for the three calendar quarters preceding the application.
13. File with their annual license renewal application a cost report to be developed by the DHSR that, at a minimum, details each nursing pool's annual revenue, expenses, and income, including profit margin. This report shall also detail what percentage of each nursing pool's annual revenue is derived from each type of health care facility (e.g., hospital, skilled nursing facility, etc.).

Reason for the Proposal

The reason for this Petition is to improve the quality of care for patients and residents in North Carolina health care facilities.

Health care facilities have increasingly been forced to rely upon nursing pool agencies during the Covid pandemic to provide adequate staff to residents and patients. This impacts every skilled nursing facility ("SNF") and every adult care home ("ACH") in North Carolina and potentially impacts other providers as well, such as home health agencies, hospices, and hospitals. In N.C. skilled nursing facilities alone, the percentage of nursing care provided by personnel of nursing pool agencies has increased almost 500% in the last several years--from 2.7% of all nursing care in the 4th quarter of 2019 to 13.3% of all nursing care in the 4th quarter of 2021 provided by nursing pool personnel. As a result, the practices of some nursing pool agencies have a much more significant impact on the care provided than they did several years ago.

This is concerning in itself due to the importance of staff continuity when caring for individuals in nursing homes, but some of the practices reported make it even more concerning.

The NCHCFA has heard multiple and ongoing complaints about the experiences of its members with some nursing pool agencies. These include the following: some nursing pools declining to fill shifts under existing contracts in an apparent effort to increase the price, sometimes shortly before a shift is set to begin; some nursing pools asserting they have no responsibility for their personnel because those personnel are independent contractors, which is not permitted under the nursing pool licensing statute; some nursing pools are enabling bidding mechanisms that result in competition over individual workers to fill shifts at multiple facilities, which results in some shifts at some facilities not being filled (or only filled when facility staff work double-shifts or similar mechanism); some nursing pools sending “nurses” to facilities who do not have a valid license; some nursing pools sending personnel into facilities as nurse aides who have troubling criminal background checks and who lack NA certification; and others. All of these have a tremendous and negative impact on the quality of care provided.

This is not a problem that is unique to North Carolina. The anecdotes heard here mirror similar experiences across the nation as evidenced by multiple public reports, news reports and significant activity in other states to amend statutes or regulations to address potential abuses by these agencies. The NCHCFA is aware of numerous states currently engaged in the process of enhancing regulation of nursing pool agencies including Iowa, Kentucky, Louisiana, Oregon, and Pennsylvania, among others. Other states have strong regulation already, including Massachusetts and Minnesota.

In addition to the items noted above that materially and directly impact the quality of care provided daily, we have also heard the following complaints from SNFs across the state:

- It appears there are nursing pool agencies in North Carolina may not be operating in compliance with existing licensure statutes and regulations applicable to such agencies, with a resulting impact on the care our SNF members provide to their residents;
 - Reports include nursing pools operating without a license from DHSR
 - And as noted above, nursing pools treating their personnel as independent contractors instead of employees or otherwise acting as if they have limited control over their personnel.
- Some nursing pool agencies have engaged in widespread pricing increases, as well as apparently some cases of price gouging during the Covid pandemic;
 - It is unclear whether these higher prices are passed along in the form of wages or other payments to nursing personnel or are retained by the pool agencies. A cost report would shed light on this issue.
- Some facility staff are lured away to some nursing pool agencies with promises of higher wages, only to learn later that they are not employees of the staffing agency, but are being treated as independent contractors responsible for their own health care and similar costs and for the payment of their own quarterly and annual state and federal taxes;
- Some nursing pool agency contracts are misleading, particularly as it relates to whether nursing pool staff are local or traveling in from a distance and the associated rates with those two different types of personnel;
- Some nursing pool agencies attempt to inflate their contractually-stated charges by adding premium per-hour or flat rate charges for “Covid outbreaks” in a facility, often defined not in

accord with CMS, CDC or local public health department definitions, but defined to mean a single case of Covid in a facility; and

- Some nursing pool agencies claim the right to excessive overtime charges when the total number of temporary staff they assign to a facility exceeds 40 hours in any single week, not when an individual employee exceeds that number of worked hours, and it's unclear whether these overtime charges are then retained by the agency or passed along to its staff members.

These are just a few of the complaints received by the NCHCFA. These issues are not limited to today's Covid-related environment. Health care staffing challenges existed before the current pandemic, have been greatly exacerbated by the Covid pandemic, and are likely to continue well into the future for economic, demographic, and workforce-related issues.

Additionally, the issues raised in this Petition are not just business issues or disputes among health care providers and nursing pool agencies. Rather, they have a direct impact on the health and well-being of North Carolinians relying on our State's nursing homes, adult care homes and other health care facilities. Regulating appropriate interaction among licensed health care entities for the protection of patients and the promotion of quality care is at the core of what the MCC does.

To be clear, the NCHCFA is not asking the Department, Division, or the MCC with this Petition to regulate wages and related benefits paid and provided to employees of nursing pool agencies, or in any manner to establish prices, charges or other costs of health care facilities engaging with nursing pool agencies. Rather, this Petition asks the MCC to enhance existing regulations to ensure compliance with the existing Nursing Pool Licensure Act codified at N.C. Gen. Stat. section 131E-154.1 to 154.8; and to provide a regulatory framework that promotes enhanced quality in the care provided in our health care settings, when that care is being provided by employees of nursing pools.

Effect on Existing Rules or Orders

This Petition will have no dilatory or negative impact on any existing rules or orders. Rather, the requested rule revisions and additions will ensure better quality of care for individuals being cared for by health care providers who rely upon nursing pool agencies during the current workforce crisis. Further, these proposed rules will ensure that nursing pool agencies and health care providers enter that relationship with a full and fair understanding of the services being offered, the conditions under which those services are being offered, and the costs of such services. The requested rule changes will also provide the Department with additional information and tools to ensure that nursing pool agencies engage in appropriate treatment of their employees, fair treatment of the health care facilities and government health care financing programs (e.g., NC Medicaid) which are their customers, and standard business practices designed to ensure accountability in the regulated services nursing pool agencies offer.

Any Data Supporting the Proposal

The dramatic rise in the percentage of nursing care being provided by nursing pools in NC skilled nursing facilities is derived from Payroll Based Journal data maintained by the Centers for Medicare and Medicaid Services (CMS). The NCHCFA is currently unaware of any empirical studies documenting the issues we have raised in this Petition. However, scores of complaints from NCHCFA members support this request. Further, issues similar to those raised in this Petition are well documented in health care

trade publications,² news stories,³ and have been highlighted by Members of Congress.⁴ Legislation entitled the Travel Nursing Agency Transparency Study Act recently filed in Congress would require an investigation into certain practices of certain nursing pool agencies.⁵ The fact that multiple states⁶ either have already engaged in legislative or rulemaking efforts or are in the process of doing so to address similar issues is further evidence of a nationwide problem with some nursing pool agency practices which is also apparent in North Carolina, as we have described.

Effect of the Proposed Rule on Existing Practices in the Area

Please see our comments in the remainder of this Petition which document the impact of not taking action to further regulate nursing pool agencies. We have also set forth herein the issues and challenges leading the NCHCFA to submit this Petition and the benefits which will inure from the adoption of additional or amended regulations.

Names of Those Most Likely to be Affected by the Proposed Rule

We cannot name individually each and every person who would be affected by the proposed rule because that list includes all health care providers in North Carolina who regularly or intermittently rely upon nursing pool agencies. The list of affected individuals also includes:

- The residents and patients of SNFs, ACHs and other health care providers who also depend directly upon staff from nursing pool agencies;
- The agencies themselves, some of which are currently the subject of ongoing, widespread criticism; and
- The personnel of nursing pool agencies.

We can, however, answer this question in the reverse – it is hard to imagine anyone who will be negatively impacted by the proposed rules, including those nursing pool agencies who have been historically and wish to continue to work in a cooperative, open, and fair manner with the health care facilities which are their customers and upon whom they rely for their business and income.

Name and Address of Petitioner

This Petition is being submitted by the North Carolina Healthcare Facilities Association, which is located at 5109 Bur Oak Circle, Raleigh, North Carolina 27612, on behalf of its nearly 400 skilled nursing facility members and the tens of thousands of elderly North Carolina residents they serve daily.

² See, e.g., <https://skillednursingnews.com/2022/04/staffing-agencies-create-unfair-playing-field-widen-gaps-in-nursing-home-workforce/>


³ See, e.g., <https://time.com/6149467/congress-travel-nurse-pay/>

⁴ See, e.g., <https://skillednursingnews.com/2022/01/members-of-congress-urge-white-house-to-investigate-price-gouging-from-staffing-agencies/>

⁵ <https://www.congress.gov/bill/117th-congress/senate-bill/4352?r=2&s=1>

⁶ See, e.g., <https://www.idsupra.com/legalnews/iowa-passes-new-requirements-for-health-1061315/>; <https://www.beckershospitalreview.com/finance/7-states-considering-legislation-to-prevent-price-gouging-by-staffing-agencies.html>

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', with a long horizontal flourish extending to the right.

Adam Sholar
President and Chief Executive Officer

Attachment 1

Cc: Ken Burgess, Esq. (via email: kburgess@bakerdonelson.com)
Jim Harrell, Esq. (via email: jim@harrellpllc.com)
Ted Goins, NCHCFA Board Chair (via email: tgoins@lscarolinas.net)
NC Secretary of Health and Human Services Kody Kinsley (via email: kody.kinsley@dhhs.nc.gov)
NC Deputy Secretary for NC Medicaid Dave Richard (via email: dave.richard@dhhs.nc.gov)

SUBCHAPTER 13L - NURSING POOL LICENSURE

SECTION .0100 - GENERAL INFORMATION

10A NCAC 13L .0101 DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "Division" means the Division of Health Service Regulation within the Department of Health and Human Services.
- (2) "Premises" means a building and the tract of land upon which it sits.

*History Note: Authority G.S. 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

SECTION .0200 - LICENSING

10A NCAC 13L .0201 APPLICATION FOR LICENSE

(a) Requests for an initial nursing pool license and each license renewal application shall be submitted on application forms made available by the Division. Each application shall include the following information:

- (1) Business identification consisting of the following:
 - (A) The business name or names under which the licensed services will be offered in brochures, yellow pages, and other advertisements.
 - (B) The full street address location of the office premises which the public will contact to obtain the offered nursing pool services.
 - (C) The postal address of the office for which licensing is requested.
 - (D) A listing or description of any state issued licenses applicable to the premises for which the application is submitted.
- (2) Ownership disclosure consisting of the following:
 - (A) The name of the legal person, corporation, partnership, or proprietor, with ownership liability and authority applying for a license.
 - (B) The name, business title, address, and telephone number of the proprietor, managing partner, or chief executive officer.
 - (C) The name of other corporations, trusts, or holding companies involved when the applying entity is a wholly owned subsidiary corporation.
- (3) Names, title and telephone number of the on-site manager for the location to be licensed.
- (4) General information on all health care related services expected to be offered to the public from the premises on the effective date of licensure.
- (5) A certification by the applicant that each temporary nursing staff member (including all nurses and nurse aides) that the licensee will provide to health care facilities in this state will be employees of the licensee and not independent contractors.
- (6) The name and address of the bank, savings bank, or savings association in which the licensee deposits all employee income tax withholdings
- (7) The name and address of any nurse, nursing assistant, or nurse aide whose income is derived from placement by the agency, if the licensee purports the income is not subject to withholding.
- (8) For renewal license applications, the results of the assessment required by 10A NCAC 13L .0301(a)(5).
- (9) For renewal license applications, the rate at which requested shifts from health care facilities are filled:
 - (A) At least 90 days prior to license expiration, the licensee shall submit an attestation on a form made available by the Division detailing the total number of contracted nursing personnel shifts, number of nursing personnel shifts missed, and number of nursing personnel shifts fulfilled for the three quarters preceding the renewal application.

(b) Nursing pools subject to this Subchapter, but exempt from separate licensure, shall submit an application in accordance with this Rule and an addendum to their existing license shall be issued.

(c) A copy of this Subchapter together with the governing statutes shall be maintained on the licensed premises for use by on-site personnel.

(d) Every application for renewal of a license shall include a cost report covering the most recently available 12 months of financial information. The information shall be reported on a form provided by the Division, which shall include, at a minimum, each nursing pool's annual revenue, expenses, and income, including profit margin. This cost report shall also detail what percentage of each nursing pool's annual revenue is derived from each type of

health care facility (e.g., hospital, skilled nursing facility, etc.). The Division may request and each nursing pool shall provide any information requested to substantiate the information set forth in the cost report. Errors in the preparation of the cost report, or failure to file, may result in revocation of a nursing pool's license.

*History Note: Authority G.S. 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 13L .0202 ISSUANCE OF LICENSE

- (a) Each site shall be individually licensed when it has been determined by the Division that the site involved is substantially in compliance with this Subchapter. Business sites using the same public business name already licensed by the Division pursuant to G.S. 131E, Articles 5 or 6 shall have "nursing pool" added to their existing license.
- (b) Nursing pools administered by health care facilities as defined in G.S. 131E-154.2 of the Nursing Pool Licensure Act, and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes and not required to be separately licensed may request the issuance of a license as a more visible means of demonstrating their compliance with the provisions of this Subchapter.
- (c) All licenses shall be renewed every two years.

*History Note: Authority G.S. 131E-154.3; 131E-154.4; 131E-154.5;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 13L .0203 PROGRAM COMPLIANCE

- (a) The Division shall employ a system of initial and renewal applications, complaint investigation and on-site inspections for nursing pools with sites in the state as a means for monitoring and determining program compliance. This system shall be applied uniformly to all licensed and license-exempt nursing pool premises. Routine licensing renewal activities may be conducted by mail. Licensing of nursing pools with sites outside the state, but which provide personnel to health care facilities within the state, shall be conducted by mail.
- (b) In the event of non-compliance with any rule or rules in this Subchapter or the Nursing Pool Licensure Act, the business shall be given no more than thirty days, the specific time period to be determined by the Division, to correct the non-compliance.
- (c) The Division may suspend, revoke, annul, withdraw, recall, cancel, or amend a license in accordance with G.S. 131E-154.6 for any nursing pool that substantially fails to comply with the rules contained in this Subchapter or that fails to implement an approved plan of correction for violations of rules cited by the Division. A nursing pool may appeal any adverse decision made by the Division concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and departmental rules 10A NCAC 01 et seq. As provided for in G.S. 131E-154.7, the Division may seek injunctive relief to prevent a person from establishing or operating a nursing pool without a license.

*History Note: Authority G.S. 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 13L .0204 PUBLIC DISPLAY

- (a) The nursing pool's license shall be valid only for the premises on which displayed and specified on the license.
- (b) The public use of the pool's license status shall not be included in any advertisement which involves any unlicensed services offered by the licensee and has the potential for misleading the public into believing that both covered and non-covered services are represented by the license.

*History Note: Authority G.S. 131E-154.3; 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.*

10A NCAC 13L .0301 WRITTEN POLICIES AND PROCEDURES

(a) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure. These policies shall also include the following:

- (1) That the nursing pool will not restrict in any manner the employment opportunities of its employees.
- (2) That the nursing pool will not, in any contract with any employee or health care facility, require the payment of liquidated damages, employment fees, or other compensation should the employee of the nursing pool agency be hired as a permanent employee of a health care facility.
- (3) That the nursing pool will retain all records for five calendar years. All records of the nursing pool agency will be immediately available to the Division.
- (4) That the nursing pool will maintain and adhere to written procedures for meeting health care facility requests for medical personnel, including the nursing pools's usual minimum notice time before medical personnel can be assigned, as well as procedures for assigning back-up medical personnel if an initial assignment is not fulfilled.
- (5) That the nursing pool will maintain a procedure for annually assessing its performance under the terms of its written agreements with health care facilities to which the nursing pool assigns nursing personnel. The procedure shall include at a minimum: (1) keeping a report of complaints from contracting health care facilities and their resolution; and (2) maintaining a record of responses to requests for assignment of nursing personnel to health care facilities. The results of this annual assessment shall be considered by the Division in deciding whether to renew a license.
- (6) That the nursing pool will provide the services of its nursing personnel to health care facilities only under the terms of a written agreement with the facility, which shall include at a minimum, the following:
 - (A) The types and qualifications of nursing personnel available for assignment through the nursing pool;
 - (B) Any requirement for minimum advance notice by a health care facility in order to assure prompt arrival of assigned nursing personnel;
 - (C) All fees and their duration including, but not limited, to:
 - i. Any fees charged to the health care facility for nursing pool staff travel time, including when such fees are assessed, whether they are separately charged to the health care facility or are embedded into or included with a flat or hourly charge to the health care facility, and any minimum distance requirements from the nursing pool employee's home to a health care facility that must exist before such charges may be assessed; and
 - ii. Any overtime charges which may be assessed to the health care facility under the written agreement including the specific situations in which such overtime charges may be assessed (e.g., when any single employee works for a contracted facility in excess of 40 hours in any individual week or when all nursing pool staff assigned to a health care facility combined work in excess of 40 hours in any individual week);
 - (D) The nursing pool's procedures for investigation and resolution of complaints about the performance of nursing personnel assigned, including interviews with the nursing personnel who may be the subject of the complaint, and other relevant witnesses;
 - (E) The nursing pool's procedures for receiving and responding to notices from health care facilities of failure of nursing personnel to report to assignments and for assigning back-up nursing pool staff in such instances;
 - (F) The nursing pool's procedures for providing notice to health care providers of actual or suspected abuse, theft, tampering or other diversion of controlled substances by nursing pool personnel which shall include, at a minimum, that the administrator of the health care facility or his or her designee shall be immediately notified, and
 - (G) The nursing pool's procedures for monitoring the quality of the nursing pool's performance which may include questionnaires or other surveys of health care facilities with which the temporary nursing pool has written agreements.

(b) At the option of the licensee, written policies and procedures may address other services not subject to the Nursing Pool Licensure Act. The Division shall not require separate policies and procedures if the premises from which nursing pool services are offered also offers additional temporary nursing services not subject to licensure.

(c) Policies shall provide that no reprisal action shall be taken against any employee who reports instances of patient rights violations or patient abuse, neglect or exploitation to the appropriate governmental authority.

(d) The Division shall require each licensed nursing pool to comply with its written policies and procedures as part of its system of Program Compliance.

History Note: Authority G.S. 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 13L .0302 PERSONNEL RECORDS

- (a) A nursing pool shall maintain a personnel record on each individual.
- (b) Each individual's personnel record shall include:
- (1) A legible copy of a current license to practice nursing as a registered nurse or a licensed practical nurse or a current Nurse Aide I or Nurse Aide II Listing Card issued by the North Carolina Board of Nursing.
 - (2) A completed job application with employment history, training, education, ~~and continuing education~~, continuing education, drug tests, criminal background checks, and a skills checklist.
 - (3) Results of reference checks.
 - (4) Performance evaluations at least annually. To inform each individual's annual performance evaluation, each nursing pool shall maintain a procedure for measuring performance and gathering feedback on the on-site performance of nursing personnel it assigns to a health care facility, including at a minimum: (A) receiving and maintaining any complaints about the individual's performance from health care facilities to which he or she has been assigned; (B) keeping a record of the individual's reliability in fulfilling assignments to health care facilities; and (C) at least one on-site assessment annually of the individual in a health care facility to which the individual is assigned.

History Note: Authority G.S. 131E-154.4;
Eff. January 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.

10A NCAC 13L .0303 INSURANCE REQUIRED

The nursing pool shall carry general and professional liability insurance written by an insurer approved by the North Carolina Department of Insurance. Such coverage shall include, at a minimum, per occurrence coverage of \$1 million and aggregate coverage of \$3 million to insure against loss, damage, or expense incident to a claim arising out of death or injury as the result of negligence or malpractice by nursing pool or a nursing pool worker. The terms of such insurance shall be disclosed to clients receiving services from the licensee. The nursing pool shall carry workers' compensation insurance written by an insurer approved by the North Carolina Department of Insurance for all of its employees, including nurses and nurse aides, that are provided to other health care facilities.

History Note: Authority G.S. 131E-154.4;
Eff. February 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015.