

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: North Carolina Department of Health and Human Services

RULE CITATION: 10A NCAC 14J .1307 Temporary

RECOMMENDATION DATE: March 8, 2022

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☐ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

*The Rule is a mere restatement of G.S. 153A-222(c).*

*Accordingly, staff recommends that the Commission object to the Rule for lack of necessity pursuant to G.S. 150B-21.9(a)(3).*

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

**§ 153A-222. Inspections of local confinement facilities.**

(a) Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility is alleged to be deficient.

(b) Within 30 days of receiving the inspection report under subsection (a) of this section, the governing body shall consider the report and shall promptly (i) initiate any action necessary to bring the facility into conformity with the minimum standards published pursuant to G.S. 153A-221 or (ii) request a contested case hearing regarding any or all findings in the report pursuant to subsection (c) of this section.

(c) A governing body, sheriff, or other administrator of a local confinement facility has a right to request a contested case hearing regarding any or all findings in the report pursuant to and in accordance with the provisions of Article 3 of Chapter 150B of the General Statutes. Appeals of any contested case hearing shall be conducted pursuant to Article 4 of Chapter 150B of the General Statutes.

(d) Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Health and Human Services who make inspections under this section may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the inmate has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged

information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section, the inmate must be advised in writing of the inmate's right to object in writing to the release of information or review of the inmate's records, and that by objecting in writing the inmate may prohibit the inspection or release of the inmate's records. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1; 1981, c. 586, s. 6; 1983, c. 745, s. 7; 1997-443, s. 11A.118(a); 2022-74, s. 9K.1(a).)



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

|   |
|---|
| 1. Rule-Making Agency: N.C. Department of Health and Human Services/Secretary   |
| 2. Rule citation & name: 10A NCAC 14J .1307/CONTESTED CASE HEARING  |
| 3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal  |
| 4. Was this an Emergency Rule: <input type="checkbox"/> Yes                      Effective date:<br><input checked="" type="checkbox"/> No  |
| 5. Provide dates for the following actions as applicable:<br><div style="margin-left: 20px;"> a. Proposed Temporary Rule submitted to OAH: 9/20/22<br/> b. Proposed Temporary Rule published on the OAH website: 9/28/22<br/> c. Public Hearing date: 10/13/22<br/> d. Comment Period: 9/28/22 – 10/19/22<br/> e. Notice pursuant to G.S. 150B-21.1(a3)(2): 9/20/22<br/> f. Adoption by agency on:    03/08/23   10:02 AM EST<br/> g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 3/24/23<br/> h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a </div>  |
| 6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.<br><br><div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare.<br/> <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress.<br/> Cite: N.C.G.A. Session Law 2022-74 (House Bill 103) “Current Operations Appropriations Act of 2022”<br/> Effective date: 10/1/22<br/> <input type="checkbox"/> A recent change in federal or state budgetary policy.<br/> Effective date of change:<br/> <input type="checkbox"/> A recent federal regulation.<br/> Cite:<br/> Effective date:<br/> <input type="checkbox"/> A recent court order.<br/> Cite order:<br/> <input type="checkbox"/> State Medical Facilities Plan.<br/> <input type="checkbox"/> Other: </div> <p>Explain: The temporary adoption to the rule in Subchapter 10A NCAC 14J, <i>Jails, Local Confinement Facilities</i>, is in response to a recent act of the General Assembly, specifically Part IX, Section 9K. in Session Law 2022-74, House Bill 103, “Current Operations Appropriations Act of 2022” that became effective on October 1, 2022. In Section 9K.1.(a) of the law, revisions were made to G.S. 153A-222 for the inspection report procedure to be used by the governing body following the inspections of local confinement facilities and for the right to request a contested case hearing in response to any or all findings in the inspection report by the governing body, sheriff, or other administrator of the local confinement facility. Section 9K.1.(b) of this Act requires the Department of Health and Human Services to adopt rules to ensure that the provisions of the law are properly implemented.</p> |

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The inspection reports of local confinement facilities contain information of significant importance to the governing body, sheriff, or other administrator of the local confinement facility. The temporary adoption of this rule will allow parties responsible for governing or administering operations of the facilities who have been impacted by the inspection report to seek a hearing to dispute any or all findings in the report in a manner that will allow a uniform system of advocacy and adjudication procedures to take place.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No**9. Rule-making Coordinator: Nadine Pfeiffer**

Phone: 919-855-3811

E-Mail: Nadine.pfeiffer@dhhs.nc.gov

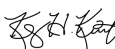
**Agency contact, if any: Jeff Harms, Acting Section Chief**

Phone: 919-855-3915

E-Mail: jeff.harms@dhhs.nc.gov

**10. Signature of Agency Head\*:**

DocuSigned by:



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\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kody Kinsley

Title: DHHS, Secretary

E-Mail: Kody.kinsley@dhhs.nc.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

**SESSION LAW 2022-74  
HOUSE BILL 103**

AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2021  
AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATIONS OF THE STATE.

The General Assembly of North Carolina enacts:

**PART I. TITLE AND INTRODUCTION**

**TITLE OF ACT**

**SECTION 1.1.** This act shall be known as the "Current Operations Appropriations Act of 2022."

**INTRODUCTION**

**SECTION 1.2.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

**PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

**GENERAL FUND APPROPRIATIONS**

**SECTION 2.1.(a)** Appropriations from the General Fund for the 2022-2023 fiscal year set out in Section 2.1(a) of S.L. 2021-180 are repealed. Appropriations from the General Fund for the budgets of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the 2022-2023 fiscal year, according to the following schedule:

|  |                     |
|--|---------------------|
| <b>Current Operations – General Fund</b> | <b>FY 2022-2023</b> |
|--|---------------------|

**EDUCATION**

North Carolina Community College System

|                          |                      |
|--------------------------|----------------------|
| Requirements             | 1,707,720,962        |
| Less: Receipts           | 350,116,886          |
| <b>Net Appropriation</b> | <b>1,357,604,076</b> |

Department of Public Instruction

|                          |                       |
|--------------------------|-----------------------|
| Requirements             | 13,568,635,108        |
| Less: Receipts           | 2,290,067,356         |
| <b>Net Appropriation</b> | <b>11,278,567,752</b> |

**THE UNIVERSITY OF NORTH CAROLINA**

Appalachian State University



final decision shall be binding upon the appellant, the county department of social services, the county board of social services, and the board of county commissioners."

## **PART IX-J. VOCATIONAL REHABILITATION SERVICES [RESERVED]**

## **PART IX-K. HHS MISCELLANEOUS**

### **EXPAND THE RIGHTS OF APPEAL PURSUANT TO INSPECTIONS OF LOCAL CONFINEMENT FACILITIES**

**SECTION 9K.1.(a)** G.S. 153A-222 reads as rewritten:

**"§ 153A-222. Inspections of local confinement facilities.**

(a) Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility ~~does not meet the minimum standards-is alleged to be deficient.~~

(b) ~~The~~ Within 30 days of receiving the inspection report under subsection (a) of this section, the governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly (i) initiate any action necessary to bring the facility into conformity with the standards-minimum standards published pursuant to G.S. 153A-221 or (ii) request a contested case hearing regarding any or all findings in the report pursuant to subsection (c) of this section.

(c) A governing body, sheriff, or other administrator of a local confinement facility has a right to request a contested case hearing regarding any or all findings in the report pursuant to and in accordance with the provisions of Article 3 of Chapter 150B of the General Statutes. Appeals of any contested case hearing shall be conducted pursuant to Article 4 of Chapter 150B of the General Statutes.

(d) Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Health and Human Services who make ~~these inspections~~ under this section may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the ~~patient, resident or client-inmate~~ has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be



considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this ~~section~~section, the ~~patient, resident or client inmate~~ must be advised in writing ~~that he has the~~ of the inmate's right to object in writing to ~~such the~~ release of information or review of ~~his records the inmate's records~~, and that by ~~an objection~~ objecting in writing ~~he the inmate~~ may prohibit the inspection or release of ~~his the inmate's~~ records."

**SECTION 9K.1.(b)** The Department of Health and Human Services shall adopt temporary rules under G.S. 150B-21.1 to comply with this section and shall adopt permanent rules to comply with this section by October 1, 2023.

**SECTION 9K.1.(c)** This section becomes effective October 1, 2022, and applies to actions taken by a governing body, sheriff, or other administrator of a local confinement facility related to inspection reports received on or after that date.

## **CLARIFY TREATMENT OF PREGNANT FEMALE INMATES**

**SECTION 9K.2.(a)** G.S. 153A-221 reads as rewritten:

**"§ 153A-221. Minimum standards.**

(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for all of the following:

...  
(11) Compliance with the requirements of Part 2B of Article 10 of Chapter 153A of the General Statutes, Dignity for Women Incarcerated in Local Confinement Facilities.

...  
(e) ~~A local confinement facility shall be subject to the requirements of Part 2B of Article 10 of Chapter 153A of the General Statutes."~~

**SECTION 9K.2.(b)** G.S. 153A-229.2(c) reads as rewritten:

"(c) Nutrition. – The sheriff or the administrator of the local confinement facility shall ensure that pregnant female incarcerated persons are provided sufficient food and dietary supplements and are provided access to food at appropriate times of day, as ordered by a physician, a physician staff member, or a local confinement facility nutritionist ~~to meet generally accepted prenatal nutritional guidelines for pregnant female incarcerated persons. in accordance with the guidelines for women who are pregnant or lactating as set forth in the most recent edition of Dietary Guidelines for Americans published by the United States Department of Health and Human Services and the United States Department of Agriculture. Orders by a physician or physician staff regarding dietary needs or restrictions for any particular pregnant incarcerated person shall take precedence over the Dietary Guidelines for Americans.~~ While in the hospital, pregnant female incarcerated persons and female incarcerated persons in the postpartum recovery period shall have access to the full range of meal options provided by the hospital to ensure that each meal meets the female incarcerated person's nutritional needs."

**SECTION 9K.2.(c)** This section is effective when it becomes law.

## **TEMPORARY AUTHORIZATION OF BEHAVIOR ANALYSTS TO PRACTICE WITHOUT SUPERVISION**

**SECTION 9K.3.(a)** Notwithstanding G.S. 90-270.154 and 21 NCAC 54 .2801 through .2806, individuals who reside in this State and meet one of the following criteria may engage in the practice of behavior analysis, as defined in G.S. 90-732(8), without the supervision of a licensed psychologist:

**SECTION 43.8.** Except as otherwise provided, this act becomes effective July 1, 2022.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of July, 2022.

s/ Phil Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 2:45 p.m. this 11<sup>th</sup> day of July, 2022

1 10A NCAC 14J .1307 is adopted under temporary procedures as follows:

2  
3 **10A NCAC 14J .1307 CONTESTED CASE HEARING**

4 A governing body, sheriff, or other administrator of a local confinement facility may request a contested case hearing  
5 pursuant to G.S. 153A-222(c).

6  
7 *History Note: Authority G.S. 153A-222; S.L. 2022-74(s.9K.1.a);*

8 *Temporary Adoption Eff. March 24, 2023.*