

# NORTH CAROLINA

# IN THIS ISSUE



## REGISTER

**Volume 15, Issue 15**  
**Pages 1404 - 1445**

**February 1, 2001**

This issue contains documents officially filed through January 10, 2001.

Office of Administrative Hearings  
 Rules Division  
 424 North Blount Street (27601)  
 6714 Mail Service Center  
 Raleigh, NC 27699-6714  
 (919) 733-2678  
 FAX (919) 733-3462

Julian Mann III, Director  
 Camille Winston, Deputy Director  
 Molly Masich, Director of APA Services  
 Ruby Creech, Publications Coordinator  
 Linda Dupree, Editorial Assistant  
 Dana Sholes, Editorial Assistant  
 Rhonda Wright, Editorial Assistant

**I. IN ADDITION**  
 Voting Rights Letter..... 1404  
 EMC – Water Resources ..... 1405 - 1407

**II. RULE-MAKING PROCEEDINGS**  
**Agriculture**  
 Pesticide Board ..... 1408  
 Plant Industry ..... 1408  
**Commerce**  
 Community Assistance Division ..... 1408 - 1409  
**Health and Human Services**  
 Social Services Commission..... 1409

**III. PROPOSED RULES**  
**Health and Human Services**  
 Medical Care Commission ..... 1410 - 1411  
 Mental Health, Developmental Disabilities  
 And Substance Abuse Services ..... 1411 - 1415

**IV. TEMPORARY RULES**  
**Commerce**  
 Community Assistance Division of..... 1416 - 1424  
**Environment and Natural Resources**  
 Health Services ..... 1424 - 1425

**V. RULES REVIEW COMMISSION..... 1426 - 1427**

**VI. CONTESTED CASE DECISIONS**  
 Index to ALJ Decisions ..... 1428 - 1434  
 Text of Selected Decisions  
 00 EHR 0072 ..... 1435 - 1439  
 98 DHR 1598..... 1440 - 1445

**VII. CUMULATIVE INDEX..... 1 - 92**

**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/24/01	09/01/00	09/20/00	01/24/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/24/01	09/15/00	09/20/00	01/24/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/24/01	10/02/00	10/20/00	01/24/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/24/01	10/16/00	10/20/00	01/24/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/24/01	10/31/00	11/20/00	01/24/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/24/01	11/14/00	11/20/00	01/24/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/24/01	12/01/00	12/20/00	05/00/02	06/29/01
15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/24/01	12/15/00	12/20/00	05/00/02	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/00/02	01/02/01	01/22/01	05/00/02	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/00/02	01/16/01	01/22/01	05/00/02	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/00/02	01/30/01	02/20/01	05/00/02	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/00/02	02/13/01	02/20/01	05/00/02	09/11/01
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	06/01/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

#### END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

#### DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:

The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

#### FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:

This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

*Voting Section*

*P.O. Box 66128*

*Washington, D.C. 20035-6128*

JDR:GS:NT:par

DJ 166-012-3

2000-4094

2000-4347

December 13, 2000

David A. Holec, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to eight annexations (Ordinance Nos. 00-98 through 00-101 and 00-124 through 00-127) and their designation to council districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on October 23 and November 24, 2000.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise required an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

**Jordan Lake Water Supply Storage Allocations – Round 2  
and  
Proposed Increase in Interbasin Transfer  
Towns of Cary, Apex, and Morrisville and Wake County (for RTP South)**

**NOTICE OF PUBLIC HEARING**

**March 5, 2001, 5:00 – 7:00 PM**

**And**

**March 6, 2001, 5:00 – 7:00 PM**

The North Carolina Environmental Management Commission (EMC) will hold two public hearings to receive comments on the Division of Water Resources' recommendations for Round 2 of Jordan Lake water supply storage allocations. The Commission will also receive comments on the petition for an increase in interbasin transfer from the Haw River Basin to the Neuse River Basin by the Towns of Cary, Apex, and Morrisville, and Wake County (for RTP South). This transfer is associated with increased water withdrawals from Jordan Lake. Notice of these hearings is given in accordance with North Carolina Administrative Code 15A:02G.0504(g) and G.S. 143-354(a)(11) and 143-215.22I(d).

The first public hearing will be conducted from 5:00 to 7:00 PM on March 5, 2001 at 512 N. Salisbury Street, Ground Floor Hearing Room, Archdale Building, Raleigh. The second public hearing will be conducted from 5:00 to 7:00 PM on March 6, 2001 at Fayetteville State University, Shaw Auditorium, Fayetteville. In addition, Division of Water Resources staff will be available to answer questions from 4:00 PM to 5:00 PM at each hearing location. The public may inspect the staff's recommendation report, the interbasin transfer petition, and the final Environmental Impact Statement (EIS) during normal business hours at the offices of the Division of Water Resources, 512 N. Salisbury Street, Room 1106, Archdale Building, Raleigh. These documents may also be viewed at the Division's web site: <http://www.ncwater.org/jordan/index.htm>.

The purpose of this announcement is to encourage those interested in these matters to provide comments and to comply with the public participation requirements regarding each of these matters. You may attend the public hearings and make relevant oral comments and/or submit written comments, data, or other relevant information. Written submissions of oral comments at the hearing are requested. The hearing officer may limit the length of oral presentations if many people want to speak. If you are unable to attend, written comments can be mailed to Tom Fransen, Division of Water Resources, DENR, 1611 Mail Service Center, Raleigh, NC 27699-1611. Comments may also be submitted electronically to [Tom.Fransen@ncmail.net](mailto:Tom.Fransen@ncmail.net). All comments must be received before 5:00 PM, March 9, 2001.

**Jordan Lake Water Supply Storage Allocations**

Jordan Lake is a U.S. Army Corps of Engineers multi-purpose reservoir located primarily in Chatham County in the Haw River Basin. The State of North Carolina has contract for the use of the entire water supply storage in Jordan Lake and, under G.S. 143-354(a)(11), can assign this storage to local governments having a need for water supply storage. Initial allocations of water supply from Jordan Lake were made in 1988. The State is currently in the second round of allocations. Ten communities have requested new or additional allocations from Jordan Lake. Several of those requests involve interbasin transfers between the Cape Fear River and Neuse River basins. See the table on the following page.

In December 1997, the EMC decided on allocation requests not involving a transfer. The EMC deferred its decision on those requests involving a transfer until the required environmental documentation could be completed. In addition, the EMC deferred its decision on Chatham County and Harnett County pending additional information.

Jordan Lake Water Supply Storage Allocations for Round 2 <sup>(a)</sup>

Applicant	Current Allocation (mgd)	Requested Additional Allocation (mgd)	Recommended Additional Allocation (mgd)	Interbasin Transfer Certification Required
Chatham County	6.0	7.0	0.0	No
Harnett County	None	12.0	0.0	No
Holly Springs	2.0 <sup>(b)</sup>	4.5 <sup>(b)</sup>	0.0	No
Cary/Apex	16.0	29.0	5.0	Yes
Morrisville	None	4.5	2.5	Yes
Wake Co/RTP	None	3.5	1.5	Yes
OWASA	10.0	0	0.0	No
Orange County	1.0	0	0.0	No
<b>Total</b>	35.0	60.5	9.0	

- (a) Allocations obtained are actually a percentage of the water supply storage in Jordan Lake. However, since all (100 percent) of the water supply storage has an estimated safe yield of 100 mgd, allocations are conveniently expressed here in terms of MGD. For example, a 6.0-mgd allocation actually represents an allocation of 6.0 percent of Jordan Lake’s water supply storage.
- (b) Holly Springs had requested an allocation of 4.5 mgd and was granted an allocation of 2.0 mgd in the December 1997 EMC decision.

The requested allocations were based on water demands in 2025, with some requests based on average daily demands and some based on maximum daily demands. The Division of Water Resources decided to base its recommendations on average daily demands in 2015, resulting in smaller allocations. Because long-range projections are so uncertain, the Division believes that a more conservative incremental allocation process is the best way to manage this important regional resource. If allocations are made as recommended, 56 million gallons per day (mgd) of the total estimated yield of 100 mgd will remain available for future allocations to local governments.

**Interbasin Transfer Request**

In conjunction with their request for a water supply allocation from Jordan Lake, the applicants (Towns of Cary, Apex, and Morrisville and Wake County acting for RTP South) have requested to increase their interbasin transfer from the Haw River Basin to the Neuse River Basin from 16.0 to 27.0 mgd. Water would be withdrawn from the Cary-Apex intake on Jordan Lake and discharged from existing permitted wastewater treatment plants located on tributaries of the Neuse River. Under the Regulation of Surface Water Transfers Act (G.S. 143-215.22I), persons intending to transfer 2.0 mgd or more, or increase an existing transfer by 25 percent or more, must first obtain a certificate from the Environmental Management Commission. As part of the petition process, the applicants completed an environmental impact statement. Review of the environmental impact statement by the Department of Environment and Natural Resources has been completed in accordance with the State Environmental Policy Act.

G.S. 143-215.22I(e) requires the notice of public hearing include *a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins.*

**The proposed transfer is an increase of 11 million gallons per day (mgd) in a previously approved transfer of 16 mgd, for a total maximum day transfer of 27 mgd. The proposed increase in the transfer will reduce the average annual flow of the Cape Fear River downstream from B. Everett Jordan Lake at Lillington, NC by a maximum of 0.49 percent (about one-half of one percent). Any impacts on downstream water quality or water supplies would occur under low flow conditions. Low flows are augmented by water released from B. Everett Jordan Lake, where two-thirds of the Lake’s storage capacity is set aside for this purpose. Because the water stored for flow augmentation will not be affected by use of the water supply storage, the transfer will not affect flows at low flow periods when downstream water availability is a concern.**



---

**Based on review of the operating rules for B. Everett Jordan Lake, the Environmental Impact Statement, and the Cape Fear hydrologic model analysis, the Department determined that the proposed transfer will have no significant direct environmental impacts in either the source or receiving basins. However, secondary impacts due to urban growth supported by the additional water supply will occur in both the source and receiving basins. These impacts include loss of wildlife habitat, increased stormwater runoff, and increased sedimentation. Existing local, state, and federal environmental protection programs will mitigate these impacts to some degree.**

*The public is invited to comment on the applicants' petition and supporting environmental documentation.* The Commission is considering and seeking comments on three options with regard to the interbasin transfer request. The options, in no particular order, are: (a) grant the certificate for the 27.0 mgd interbasin transfer request; (b) deny the 27.0 mgd interbasin transfer request; or (c) grant the certificate including any conditions necessary to achieve the purposes of the statute or to provide mitigation measures. The public is invited to comment on the following possible conditions and to suggest any other appropriate conditions, including other limitations on the amount of the transfer.

1. Allow the requested maximum day interbasin transfer amount of 27 mgd until 2010, but reduce it to 16 mgd after 2010.
2. Require Cary and Apex to have a wastewater plant discharging to the Cape Fear River on-line by 2010.
3. Require Apex, Morrisville, and Wake County to enact ordinances similar to the Neuse Buffer Rules for the parts of their jurisdictions that are within the Jordan Lake watershed. (Cary has already adopted a buffer ordinance.)
4. Require applicants to develop a compliance and monitoring plan for reporting maximum daily transfer amounts, compliance with certificate conditions, progress on mitigation measures, and drought management activities.

For more information, visit our project website at: <http://www.ncwater.org/jordan/index.htm>. You may also contact Tom Fransen in the Division of Water Resources at 919-715-0381, or email: [tom.fransen@ncmail.net](mailto:tom.fransen@ncmail.net).

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 2 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.

CHAPTER 9 – FOOD AND DRUG PROTECTION DIVISION

\*\*\*\*\*

Notice of Rule-making Proceedings is hereby given by the North Carolina Pesticide Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 09L .1103, .1109 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-440

Statement of the Subject Matter:

02 NCAC 09L .1103 - lists options for becoming certified in North Carolina as a Private Pesticide Applicator.

02 NCAC 09L .1109 - requires private pesticide applicators to complete two continuing certification credit hours of private pesticide applicator certification standards review. A recommendation from the North Carolina Pesticide Advisory Committee would require applicants for initial certification as private pesticide applicators to pass an examination; require private pesticide applicators currently certified on the effective date of this Rule change to pass an examination within three years of the expiration of their current certification period; and require certified private pesticide applicators to complete two additional continuing certification credit hours per three year certification period in order to be recertified.

Reason for Proposed Action: The Pesticide Board is initiating rule-making proceedings as a result of recommendations received from its Pesticide Advisory Committee. The purpose is to require applicants for initial certification as private pesticide applicators to pass an examination; require currently certified private pesticide applicators to pass an examination within three years of the expiration of their current certification period (upon effective date of rules changes); and increase the requirements for recertification of private pesticide applicators to include two additional continuing certification credit hours.

Comment Procedures: Written comments may be submitted to James W. Brunette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North

CHAPTER 48 – PLANT INDUSTRY

Notice of Rule-making Proceedings is hereby given by the North Carolina Board of Agriculture in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 48A .1702 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-420

Statement of the Subject Matter: This Rule establishes a list of plants, known as the Noxious Weed List, which are subject to regulation under the Plant Pest Law. Proposed amendments would add Oriental Bittersweet to the list and make corrections in the scientific names of Waterprimrose and Water Fern.

Reason for Proposed Action: Oriental Bittersweet is a non-native, invasive plant species which invades natural woodland areas, particularly in western North Carolina, and interferes with hardwood regeneration. Other changes are technical corrections in the scientific names of certain noxious weeds.

Comment Procedures: Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

TITLE 4 – DEPARTMENT OF COMMERCE

CHAPTER 19 – DIVISION OF COMMUNITY ASSISTANCE

Notice of Rule-making Proceedings is hereby given by the Department of Commerce, Division of Community Assistance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**RULE-MAKING PROCEEDINGS**

**Citation to Existing Rule Affected by this Rule-making:** *04NCAC 19L - Other rules may be proposed in the course of the rule-making process.*

**Authority for the Rule-making:** *G.S. 143B-10; 143B-431; 24 C.F.R. 570.481-570.483*

**Statement of the Subject Matter:** *Rules that govern the Community Development Block Grant Program*

**Reason for Proposed Action:** *The Division of Community Assistance wants to update the current procedures to bring them in line with the annual action plan.*

**Comment Procedures:** *Written comments should be mailed to Gloria Nance-Sims with the Division of Community Assistance at 4313 Mail Service Center, Raleigh, NC 27699-4313.*

---

**TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHAPTER 41 – CHILDREN'S SERVICES**

**Notice of Rule-making Proceedings** *is hereby given by the Social Services Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rule Affected by this Rule-making:** *10 NCAC 41H .0405, .0407 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the Rule-making:** *G.S. 131D-10.5; 143B-153*

**Statement of the Subject Matter:** *The Social Services Commission intends to amend rules in 10 NCAC 41H to change the requirements for use of the vendor payments for children with special needs. The current requirement creates a barrier to the provision of the needed services to children.*

**Reason for Proposed Action:** *Adoption assistance now includes the amount of \$1200.00 for vendor payments to providers of medical services not covered by Medicaid, and \$1200.00 for vendor payments to providers of psychological, therapeutic, and remedial services. This separation of vendor payment creates a barrier in the provision of needed services to children. Some children require extensive medical services and other children require extensive therapeutic services, much of which is not covered by Medicaid. The limited amount of fund is quickly exhausted. If it cannot be proven that the child has a therapeutic need along with the medical need, or a medical need along with the therapeutic need, the agency cannot authorize more than \$1200.00 for a child. Since children have such special needs, a change is needed so the total amount of vendor payments (\$2400.00) can be used for one or both services to a child. Also, since some providers of Medicaid are not available to children and some adoptive parents chose to use providers who do not accept Medicaid, vendor payments need to be available to cover medical or therapeutic expenses incurred by adoptive parents.*

**Comment Procedures:** *Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055.*

PROPOSED RULES

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Care Commission intends to adopt the rules cited as 10 NCAC 42B .2407; 42C .2406; 42D .1832. Notice of Rule-making Proceedings was published in the Register on December 1, 2000.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: March 16, 2001

Time: 9:00 a.m.

Location: The Jane S. McKimmon Conference and Training Center, corner of Gorman St. and Western Blvd., Raleigh, NC.

Reason for Proposed Action: It is necessary to adopt permanent rules to replace the temporary rules which were adopted pursuant to House Bill 1514. The Bill was ratified during the 1999 short session and requires the Medical Care Commission to adopt temporary rules for the purpose of defining the circumstances under which adult care homes may admit residents on a short term basis for the purpose of caregiver respite.

Comment Procedures: Written comments should be mailed to Doug Barrick, Adult Care Section, 2708 Mail Service Center, Raleigh, NC 27699-2708. The comments must be submitted no later than the time of the public hearing on March 16, 2001. Should you have questions concerning the rules, feel free to contact Doug Barrick at 919-733-6650.

Fiscal Impact

- State
Local
Substantive (>\$5,000,000)
None

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B – LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .2400 – MISCELLANEOUS RULES

10 NCAC 42B .2407 RESPITE CARE

Rule 10 NCAC 42C .2406 shall control for this Subchapter except that respite care is subject to the rules of this Subchapter with the exception of Rules .1702, .1707, .1802, and .2001, .2402 and .2403.

Authority G.S. 131D-2; 143B-165; S.L. 2000-50.

SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

SECTION .2400 – ADMISSION POLICIES

10 NCAC 42C .2406 RESPITE CARE

(a) For the purposes of this Subchapter, respite care is defined as supervision, personal care and services provided for persons admitted to an adult care home on a temporary basis for temporary caregiver relief, not to exceed 30 days.

(b) Respite care is not required as a condition of licensure. However, respite care is subject to the requirements of this Subchapter except for Rules .2402, .2404, .2506, .3101, .3701, .3702 and .3802(a).

(c) The number of respite care residents and adult care home residents shall not exceed the facility's licensed bed capacity.

(d) The respite care resident contract shall specify the rates for respite care services and accommodations, the date of admission to the facility and the proposed date of discharge from the facility. The contract shall be signed by the administrator or designee and the respite care resident or his responsible person and a copy given to the resident and responsible person.

(e) Upon admission of a respite care resident into the facility, the facility shall assure that there is documentation of a negative TB skin test within the past 12 months and current physician orders for any medications, treatments and special diets for inclusion in the respite care resident's record. The facility shall assure that the respite care resident's physician or prescribing practitioner is contacted for verification of orders if the orders are not signed and dated within seven calendar days prior to admission to the facility as a respite care resident or for clarification of orders if orders are not clear or complete.

(f) The facility shall complete an assessment which allows for the development of a short-term care plan prior to or upon admission to the facility with input from the resident or responsible person. The assessment shall address respite resident needs, including identifying information, hearing, vision, cognitive ability, functional limitations, continence, special procedures and treatments as ordered by physician, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The facility may develop and use its own assessment instrument or use the assessment

PROPOSED RULES

instrument approved by the Department for initial admission assessments as stated in Rule .3701 of this Subchapter. The care plan shall be signed and dated by the facility's administrator or designated representative and the respite care resident or responsible person.

(g) The respite care resident's record shall include a copy of the signed respite care contract; the assessment and care plan; documentation of a negative TB skin test within the past 12 months; documentation of any contacts (office, home or telephone) with the resident's physician or other licensed health professionals from outside the facility; physician orders; medication administration records; a statement, signed and dated by the resident or responsible person, indicating that information on the home as required in Rule .2405 of this Subchapter has been received; a written description of any acute changes in the resident's condition or any incidents or accidents resulting in injury to the respite care resident, and any action taken by the facility in response to the changes, incidents or accidents; and how the responsible person or his designated representative can be contacted in case of an emergency.

(h) The respite care resident's responsible person or his designated representative shall be contacted and informed of the need to remove the resident from the facility if one or more of the following conditions exists:

- (1) the resident's condition is such that he is a danger to himself or poses a direct threat to the health of others as documented by a physician; or
(2) the safety of individuals in the home is threatened by the behavior of the resident as documented by the facility.

Documentation of the emergency discharge shall be on file in the facility.

Authority G.S. 131D-2; 143B-165; S.L. 2000-50.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1800 - REMAINING POLICIES AND REGULATIONS

10 NCAC 42D .1832 RESPITE CARE

(a) Rule 10 NCAC 42C .2406 shall control for this Subchapter except that respite care is subject to the rules of this Subchapter unless cross-referenced to the rules specified as exceptions in 10 NCAC 42C .2406(b).

(b) If the facility is staffing to census, the respite care residents shall be included in the daily census for determination of appropriate staffing levels according to the rules of this Subchapter.

Authority G.S. 131D-2; 143B-165; S.L. 2000-50.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and

Substance Abuse Services intends to amend the rules cited as 10 NCAC 45H .0203-.0204. Notice of Rule-making Proceedings was published in the Register on December 1, 2000.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing within 15 days of this notice. The request should be submitted to John Womble, DMHDDSAS, Regulatory Unit, 3016 Mail Service Center, Raleigh, NC 27699-3016.

Reason for Proposed Action:

10 NCAC 45H .0203 - This action is proposed in order to be consistent with the Drug Enforcement Administration (DEA) by transferring Dronabinol from Schedule II to Schedule III. This substance was originally scheduled in May, 1986 for the treatment of nausea and vomiting associated with cancer chemotherapy.

10 NCAC 45H .0204 - This action is proposed in order to be consistent with the Drug Enforcement Administration (DEA) by transferring Dronabinol from Schedule II to Schedule III. This substance was originally scheduled in May, 1986 for the treatment of nausea and vomiting associated with cancer chemotherapy. This agency is also proposing placing "Ketamine" in Schedule IV as a depressant, also to be consistent with action by the DEA.

Comment Procedures: Written comments should be sent to John Womble, Regulatory Branch, 3016 Mail Service Center, Raleigh NC 27699-3016. Comments will be received through March 5, 2001.

Fiscal Impact

- State
Local
Substantive (>\$5,000,000)
None

CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

10 NCAC 45H .0203 SCHEDULE II

(a) Schedule II shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name and designated listed in this Rule. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth opposite it.

(b) Substances, Vegetable Origin or Chemical Synthesis. Unless specifically excepted or unless listed in another schedule, any of the

**PROPOSED RULES**

following substances whether produced directly or indirectly by extraction from the substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, is a Schedule II drug:

(1) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, ~~thebaine-derived butorphanol~~, nalbuphine, dextrorphan, naloxone, naltrexone, and nalmefene and their respective salts but including the following:

(A)	Raw opium	9600
(B)	Opium extracts	9610
(C)	Opium fluid extracts	9620
(D)	Powdered opium	9639
(E)	Granulated opium	9640
(F)	Tincture of opium	9630
(G)	Codeine	9050
(H)	Ethylmorphine	9190
(I)	Hydrocodone	9193
(J)	Hydromorphone	9150
(K)	Metopon	9260
(L)	Morphine	9300
(M)	Oxycodone	9143
(N)	Oxymorphone	9652
(O)	Thebaine	9333
(P)	Etorphine hydrochloride	9059

(2) any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subparagraph (1) of this Paragraph (b), except that these substances shall not include isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw 9650

(4) coca leaves (9040) and any salts, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine (9041) or ecgonine (9180);

(5) concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy) (9670).

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, is a Schedule II drug, dextrorphan excepted:

(1)	Alfentanil	9737
(2)	Alphaprodine	9010
(3)	Anileridine	9020
(4)	Benzitramide	9800
(5)	Carfentanil	9743
(6)	Dihydrocodeine	9120
(7)	Diphenoxylate	9170
(8)	Fentanyl	9801
(9)	Isomethadone	9226
(10)	Levomethorphan	9210
(11)	Levo-alpha-acetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM]	9648
(12)	Levorphanol	9220
(13)	Metazocine	9240
(14)	Methadone	9250
(15)	Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane	9254
(16)	Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid	9802
(17)	Pethidine(meperidine)	9230
(18)	Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	9232
(19)	Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	9233
(20)	Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid	9234

**PROPOSED RULES**

- 
- |                     |      |
|---------------------|------|
| (21) Phenazocine    | 9715 |
| (22) Piminodine     | 9730 |
| (23) Racemethorphan | 9732 |
| (24) Racemorphan    | 9733 |
| (25) Remifentanil   | 9739 |
| (26) Sufentanil     | 9740 |
- (d) Stimulants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
- |  |      |
|--|------|
| (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers                  | 1100 |
| (2) Methamphetamine, its salts, isomers and salts of its isomers                               | 1105 |
| (3) Phenmetrazine and its salts  | 1631 |
| (4) Methylphenidate  | 1724 |
| (5) Phenylacetone  |      |
| Some trade or other names:Phenyl-2-propanone; P2P; benzyl methyl Ketone; methyl benzyl Ketone; | 8501 |
| (6) Phencyclidine  | 7471 |
| (A) 1-Phencyclohexylamine  | 7460 |
| (B) 1-Piperidinocyclohexanecarbonitrile (PCC)  | 8603 |
- (e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
- |                   |      |
|-------------------|------|
| (1) Amobarbital   | 2125 |
| (2) Glutethimide  | 2250 |
| (3) Pentobarbital | 2270 |
| (4) Secobarbital  | 2315 |
- (f) Hallucinogenic Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a hallucinogenic effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, is a Schedule II drug:
- (1) ~~Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product~~ ~~7369~~  
[Some other names for dronabinol:  
[(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-yl], or (-)-delta-9-(trans)-tetrahydrocannabinol]
- (2) Nabilone [Another name for nabilone 7369 7379  
(+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

Authority G.S. 90-88; 90-90; 143B-147.

**10 NCAC 45H .0204 SCHEDULE III**

- (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this Rule. Each drug or substitute has been assigned the Drug Enforcement Administration controlled substances code number set forth opposite it.
- (b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
- |  |      |
|--|------|
| (1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances which are currently listed as excepted compounds under Section 9.32 and any other drug of the quantitative composition shown in that list of those drugs or which is the same except that it contains a lesser quantity of controlled substances | 1405 |
| (2) Benzphetamine  | 1228 |
| (3) Chlorphentermine   | 1645 |
| (4) Clortermine  | 1647 |
| (5) Phendimetrazine  | 1615 |

**PROPOSED RULES**

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- |   |      |
|---|------|
| (1) Any compound, mixture or preparation containing:  |      |
| (A) Amobarbital   | 2126 |
| (B) Secobarbital  | 2316 |
| (C) Pentobarbital   | 2271 |
| or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule;                  |      |
| (2) Any suppository dosage form containing:   |      |
| (A) Amobarbital   | 2126 |
| (B) Secobarbital  | 2316 |
| (C) Pentobarbital   | 2271 |
| or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository; |      |
| (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof                    | 2100 |
| (4) Chlorhexadol  | 2510 |

(5) Ketamine 7285

- |  |      |
|--|------|
| <del>(5)</del> (6) Lysergic acid   | 7300 |
| <del>(6)</del> (7) Lysergic acid amide   | 7310 |
| <del>(7)</del> (8) Methyprylon   | 2575 |
| <del>(8)</del> (9) Sulfondiethylmethane  | 2600 |
| <del>(9)</del> (10) Sulfonethylmethane   | 2605 |
| <del>(10)</del> (11) Sulfonmethane   | 2610 |
| <del>(11)</del> (12) Tiletamine and zolazepam or any salt thereof                        |      |
| Some trade or other names for a tiletamine- zolazepam combination product: Telazol.      |      |
| Some trade or other names for tiletamine:  |      |
| 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.  |      |
| Some trade or other names for zolazepam:   |      |
| 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one. |      |
| flupyrazapon.  | 7295 |

(d) Nalorphine (a narcotic drug) 9400

(e) Narcotic Drugs. Unless specifically excepted or unless in another schedule, any material compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

- (1) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium--9803;
- (2) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9804;
- (3) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a fourfold or greater quantity of an isoquinoline alkaloid of opium--9805;
- (4) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9806;
- (5) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9807;
- (6) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9808;
- (7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or no more than 25 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9809;
- (8) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active nonnarcotic ingredients in recognized therapeutic amounts--9810.

(f) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:



**PROPOSED RULES**

---

Anabolic Steroids

4000

(g) Hallucinogenic Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a hallucinogenic effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, is a Schedule II drug:

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in

a U.S. Food and Drug Administration approved drug product \_\_\_\_\_ 7369

[Some other names for dronabinol:

[(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo

[b,d]pyran-1-yl], or (-)-delta-9-(trans)-tetrahydrocannabinol]

*Authority G.S. 90-88; 90-91; 143B-147.*

## TEMPORARY RULES

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

### TITLE 04 – DEPARTMENT OF COMMERCE

**Rule-making Agency:** *Department of Commerce, Division of Community Assistance*

**Rule Citation:** *04 NCAC 19L .0103, .0401, .0403, .0407, .0501-.0502, .0802, .0901, .0911-.0912, .1002, .1701-.1703, .2001-.2003*

**Effective Date:** *January 1, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 143B-10*

**Reason for Proposed Action:** *Local governments and citizen groups have asked for more flexibility in terms of the types of activities allowed and the method of distribution funds. Consistently people expressed at various public meetings that this type of flexibility is needed and would have an even more lasting impact on communities. These temporary rules allow for greater local government flexibility in the use of these funds and more comprehensive approaches to community development under the CDBG budget adopted by the General Assembly for 2000-2001.*

**Comment Procedures:** *For comments, please contact Gloria Nance-Sims at the Division of Community Assistance, 1307 Glenwood Ave., Raleigh, NC 27605, (919) 733-2850.*

### CHAPTER 19 – DIVISION OF COMMUNITY ASSISTANCE

#### SUBCHAPTER 19L – NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

#### SECTION .0100 – GENERAL PROVISIONS

##### 04 NCAC 19L .0103 DEFINITIONS

- (a) "Act" means Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended.
- (b) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.
- (c) "CDBG" means the State-administered Community Development Block Grant Program.
- (d) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.
- (e) "Community Development Program" means the annual program of projects and activities to be carried out by the applicant with funds provided under this Subchapter and other resources.

(f) "Department" means the North Carolina Department of Commerce.

(g) "Division" means the Department of Commerce's Division of Community Assistance.

(h) "HUD" means the U.S. Department of Housing and Urban Development.

(i) "Local Government" means any unit of general city or county government in the State.

(j) Low-income families are those with a family income of 50 percent or less of median-family income. Moderate-income families are those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.

(k) "Low- and Moderate-Income Persons" means members of families whose incomes are within the income limits of low- and moderate-income families as defined in Paragraph (j) of this Rule.

(l) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.

(m) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.

(n) "Project" means one or more activities addressing either:

- (1) community revitalization needs; or
- (2) economic development needs; or
- (3) development of housing for persons of low- and moderate-income; or
- (4) urgent needs of the ~~applicant~~. [applicant](#); or
- (5) [infrastructure needs](#); or
- (6) [scattered site housing](#).

(o) "Recipient" means a local government that has been awarded a Community Development Block Grant and executed a Grant Agreement with the Department.

(p) "Scattered site" means acquisition, clearance, relocation, historic preservation and building rehabilitation activities which benefit low or moderate income persons or eliminate specific conditions of blight or decay on a spot basis not located in a slum or blighted area.

(q) "Secretary" means the Secretary of Department of Commerce or his designee.

(r) "State" means the State of North Carolina.

(s) "Urban County" means a county as defined by Section 102(a)(6) of the Act.

(t) The definitions in this Rule apply to terms used in this Subchapter.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.481 - 570.483; Eff. July 1, 1982;*

## TEMPORARY RULES

Amended Eff. March 1, 1995; June 1, 1993; May 1, 1992;  
September 1, 1990;  
Temporary Amendment Eff. January 1, 2001.

### SECTION .0400 – DISTRIBUTION OF FUNDS

#### 04 NCAC 19L .0401 GENERAL

(a) The Division shall designate specific due dates or open periods of time for submission of grant applications under each category, based on the amount of funds available and coordination with other federal program funding cycles. Urgent Needs applications may be submitted at any time.

(b) In cases where the Division makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a grant award, the Division may compensate that applicant at the earliest time sufficient funds become available or with a grant in the next funding cycle.

(c) Applicants may apply for funding under the grant categories of Community Revitalization, Housing Development, ~~Scattered Site Housing, Community Empowerment, Infrastructure, Demonstration Projects, and Urgent Needs. Urgent Needs, and Economic Development.~~ Applicants shall not apply for Contingency funding. Contingency awards may be made to eligible applicants in any category.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483;  
Eff. July 1, 1982;  
Amended Eff. August 1, 1998; March 1, 1986; October 1, 1984;  
March 1, 1984;  
Temporary Amendment Eff. January 1, 2001.

#### 04 NCAC 19L .0403 SIZE AND USE OF GRANTS MADE TO RECIPIENTS

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization: Concentrated Needs subcategory - ~~seven hundred fifty thousand dollars (\$750,000), seven hundred thousand dollars (\$700,000), Infrastructure subcategory category - eight hundred fifty thousand dollars (\$850,000) Infrastructure subcategory - eight hundred fifty thousand dollars (\$850,000), and Scattered Site subcategory category - four hundred thousand dollars (\$400,000) Housing Development - two hundred fifty thousand dollars (\$250,000); Urgent Needs - six hundred thousand dollars (\$600,000); Contingency - six hundred thousand dollars (\$600,000). (\$600,000); Community Empowerment implementation grant - seven hundred fifty thousand dollars (\$750,000).~~ Applicants shall not have a project or combination of projects under active consideration for funding which exceeds one million two hundred fifty thousand dollars (\$1,250,000), except for Urgent Needs ~~projects and, one Demonstration project. projects, Demonstration projects, Capacity Building, and Scattered Site Housing.~~ Applicants in the Community Revitalization category shall choose to apply for either a Concentrated Needs award, or ~~a an infrastructure award, or a~~

~~scattered site award, but no more than one from the same HUD allocation. Revitalization Strategy award.~~

(b) No local government may receive more than a total of one million two hundred fifty thousand dollars (\$1,250,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local governments may also receive up to six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and funds for one demonstration project in addition to other grants awarded during the same time period.

(c) ~~Community Revitalization basic category Concentrated Needs subcategory~~ applicants may spend a portion of their total grant amount to finance local option activities. Up to 15 percent may be spent on eligible activities which do not need to be directly related to proposed ~~projects - projects except in the Infrastructure subcategory. Alternatively, up to 25 percent may be spent on eligible activities that contribute to comprehensive development of the main project area in a Concentrated Needs grant.~~ Job creation activities are not eligible local option ~~activities, activities unless they are part of the 25 percent alternative.~~ Local option activities will not be competitively rated by the Division, but may be limited to specific eligible activities. Each local option project must show that:

- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons, except that CDBG funds may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) The Division may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning and administrative budgets without prior Division approval. In no case, may applicants budget and expend more than 18 percent of the sum of funds requested and program income for administrative and planning activities for each project, except that demonstration funds may be awarded for projects limited to planning activities only in which case all funds will be spent for planning and administration.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate grant amounts for each applicant, the Division may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; 42 U.S.C. 5301;  
Eff. July 1, 1982; Amended Eff. August 1, 1998; February 1, 1996;  
March 1, 1995; June 1, 1994; June 1, 1993; June 1, 1992;

## TEMPORARY RULES

Temporary Amendment Eff. January 1, 2001.

### **04 NCAC 19L .0407 GENERAL APPLICATION REQUIREMENTS**

(a) Local governments shall submit applications as prescribed by this Rule in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the Division to rate them against the selection criteria. In addition, the following may be considered: information from any source which regards the eligibility of the applicant or application; the legality or feasibility of proposed activities; the applicant's compliance with application procedures specified in this Subchapter or the accuracy of the information presented in the application; evaluation of proposed projects by on-site review; and category-specific information described in Sections .0500, .0700, .0800, .1200, .1300, and .1700 of this Subchapter. All applicants shall address their projects to one of the following grant categories: Community Revitalization (either Concentrated Needs, ~~infrastructure or scattered site or Revitalization Strategies~~), Housing Development, Urgent Needs, Demonstration, ~~Scattered Site Housing or Community Empowerment, Infrastructure, and Economic Development~~. Applicants may apply in more than one grant category, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in sufficient detail to be adequately rated.

(b) Applications must be received by the Division's administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(c) Applicants must provide citizens with adequate opportunity for meaningful involvement in the development of Community Development Block Grant applications. Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the Division is aware of an applicant's failure to meet these citizen participation requirements, the Division may not rate the application.

(d) The Division may submit all CDBG applications and environmental review records as required by the National Environmental Policy Act and the State Environmental Policy Act to the State Clearinghouse of the Department of Administration for review and comments. The Division may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

(e) The applicant shall certify to the Division that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state requirements are available for public inspection from the Division.

(f) Applicants must comply with the Housing and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, and Executive Orders.

(g) Application requirements described in this Rule .0407 do not apply to demonstration grants and Urgent Needs grants, except for Paragraphs (a), (d), (f) and (g).

(h) For multi-family rental housing activities, the applicant must state in the application the standards it has adopted for determining affordable rents for such activities.

(i) Applicants that receive CDBG funding for projects may charge the cost of application preparation to prior CDBG programs or to the current program provided that procurement procedures consistent with 24 CFR 85.36 are followed. No more than three thousand five hundred dollars (\$3,500) may be charged to the CDBG program for application preparation.

(j) Applicants may apply for a Capacity Building grant in any category except in the Urgent Needs and Demonstration Projects categories.

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.483;*

*Eff. July 1, 1982;*

*Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; June 1, 1992;*

*Temporary Amendment Eff. January 1, 2001.*

### **SECTION .0500 – COMMUNITY REVITALIZATION PROJECTS**

#### **04 NCAC 19L .0501 DESCRIPTION**

(a) The Community Revitalization category includes activities in which a majority of funds is directed towards improving, preserving or developing residential areas. All eligible CDBG activities may be undertaken for the purpose of community revitalization.

Applications for funding may involve single or multiple activities, addressing one or more needs in the ~~area, area except for infrastructure and scattered site subcategories which addresses one need.~~

All Community Revitalization ~~activities, activities, except for scattered site activities,~~ must be carried out within defined project areas.

Community Revitalization funds shall be distributed to eligible units of local government on a competitive basis. Community Revitalization projects shall be evaluated against other Community Revitalization project proposals.

(b) The Community Revitalization category includes a subcategory for ~~scattered site housing activities which are directed towards one hundred per cent low and moderate income benefit or the prevention or elimination of slums or blight. Scattered site projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities.~~

~~Scattered site activities may be carried out in any location throughout the applicant's jurisdiction and need not be carried out in an area of concentrated need.~~

~~Up to 5 percent of the total project cost may be contributed from local or non-local funds in scattered site housing rehabilitation projects.~~

~~Scattered site funds shall be distributed to eligible units of local government on a competitive basis, and projects shall be evaluated against other scattered site project proposals. Revitalization Strategies activities which provides funds to selected governments~~

## TEMPORARY RULES

~~to address multiple need in high poverty areas. This new subcategory will provide funding to help carry out a long term revitalization strategy. Up to three hundred fifty thousand dollars (\$350,000) per year, will be awarded to eligible local government to carry out a strategy over three to five years. Revitalization Strategies funds can be used for any of the following components as part of strategies to address high poverty arrears in Tier 1/Tier 2 counties and non-entitlement municipalities with State Development Zones: housing, public services, economic development, public facilities, infrastructure. Activities must be targeted toward a defined geographical area that has at least 25% poverty and must involve collaboration with community/economic development organizations and partners.~~

~~(c) The Community Revitalization category includes a subcategory for public infrastructure projects within a definable project area. Projects will be evaluated against other infrastructure project proposals, for concentrated needs activities which provides funds for improving, preserving, or developing residential neighborhoods. Concentrated Needs may not include more than one project. A project may have two sub-areas. Projects may have single or multiple activities except a project may not have only water and/or sewer activities. The maximum award amount for a Concentrated Needs application is seven hundred thousand dollars (\$700,000). The highest priority is given to housing needs, substandard housing, lack of water/sewer, and the second priority is given to neighborhood needs (streets and drainage). Concentrated needs funds can be used for rehabilitation, acquisition, clearance, relocation, disposition, water and wastewater, and streets and drainage.~~

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483; Eff. July 1, 1982; Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; October 1, 1990; Temporary Amendment Eff. January 1, 2001.*

### 04 NCAC 19L .0502 ELIGIBILITY REQUIREMENTS

(a) Applications for concentrated needs subcategory funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons, except that CDBG funds proposed for local option activities may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applications that do not meet these eligibility requirements shall not be rated or funded. In designing projects which meet these requirements, applicants must ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

(b) Applicants for ~~scattered site~~ Revitalization Strategies subcategory funds must show that:

- (1) ~~Rehabilitation activities of occupied and vacant units must benefit 100 percent low and moderate income persons; the defined area has at least 25 percent of poverty as determined in the most recent decennial census and defined in HUD CPD NOTICE 97-01 paragraph D section 2 third bullet as all of census tracts/block numbering areas in the area have at least a 25 percent poverty rate, and the area is primarily residential;~~ and
- (2) CDBG funds proposed for acquisition, clearance, and disposition of vacant units will address ~~the~~ a national objective, objective of preventing or eliminating slums or blight.

(c) Applicants shall have the capacity to administer a CDBG program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs. Applicants that show a lack of capacity will not be rated or funded.

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483; Eff. July 1, 1982; Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; September 1, 1990; Temporary Amendment Eff. January 1, 2001.*

### SECTION .0800 – URGENT NEEDS/CONTINGENCY PROJECTS

#### 04 NCAC 19L .0802 ELIGIBILITY REQUIREMENTS

Urgent Needs grant applicants must ~~certify to meet~~ all three ~~four~~ of the following eligibility requirements:

- (1) the need addressed by the application must have arisen during the preceding 18-month period and represent an imminent threat to public health or safety;
- (2) the need addressed by the application must represent a unique and unusual circumstance that does not occur frequently in a number of communities in the state;
- (3) the applicant does not have sufficient local ~~resources; and resources, and state or federal resources are not available to alleviate the urgent need.~~
- (4) other financial resources are not available to alleviate the urgent need.

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(3); 24 C.F.R. 570.483; Eff. July 1, 1982;*

## TEMPORARY RULES

*Amended Eff. August 1, 1998; March 1, 1995; June 1, 1993; March 1, 1986; March 1, 1984;*  
*Temporary Amendment Eff. January 1, 2001.*

### SECTION .0900 – GRANT ADMINISTRATION

#### 04 NCAC 19L .0901 GRANT AGREEMENT

(a) Upon approval of the application by the Division, a written grant agreement shall be executed between the recipient and the Division. These Rules, the approved application, guidelines, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) The grant agreement in its original form and all modifications thereto shall be kept on file in the office of the recipient in accordance with Rule .0911 of this Section.

(c) The Division may condition the grant agreement until the recipient demonstrates compliance with all applicable laws and regulations. In the case of Housing Development and **Community Empowerment Revitalization Strategies** projects the grant agreement may be conditioned until legally binding commitments have been obtained from all participating entities.

(d) Neither CDBG nor non-CDBG funds involved in a project may be obligated, nor may any conditioned project activities begin until the Division releases in writing any and all applicable conditions on the project. Recipients may incur costs prior to release of conditions with prior Division approval in accordance with Rule .0908 of this Section.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483;*

*Eff. July 1, 1982;*

*Amended Eff. August 1, 1998; June 1, 1994; June 1, 1993; September 1, 1990; May 1, 1998;*

*Temporary Amendment Eff. January 1, 2001.*

#### 04 NCAC 19L .0911 RECORDKEEPING

(a) The Secretary of the Department of Commerce, the Secretary of the Department of Housing and Urban Development, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this Subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) All Community Development Program records that are public under G.S. 132 shall be made accessible to interested individuals and groups during normal working hours, and shall be maintained at all times at the recipient's local government office.

(c) Financial records, supporting documents and all other reports and records required under this Subchapter, and all other records pertinent to the Community Development Program shall be retained by the recipient for a period of **three-five** years from the date of the closeout of the program, except as follows:

- (1) Records that are the subject of audit findings shall be retained for **three-five** years or until such audit findings have been resolved, whichever is later;

(2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for **three-five** years after its final disposition;

(3) Records for any displaced person shall be retained for **three-five** years after he/she has received final payment;

(4) Records pertaining to each real property acquisition shall be retained for **three-five** years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with Subparagraph (3) of this Section, whichever is later; and

(5) If a litigation, claim or audit is started before the expiration of the **three-five**-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(d) All records shall be sufficient to determine compliance with the requirements and primary objectives of the Community Development Block Grant Program and all other applicable laws and regulations. All accounting records shall be supported by source documentation and shall be in compliance with Rule .0906 of this Section.

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A.*

*5304(d)(2),(e); 24 C.F.R. 570.490;*

*Eff. July 1, 1982;*

*Amended Eff. August 1, 1998; June 1, 1993; September 1, 1990; May 1, 1988; April 1, 1983;*

*Temporary Amendment Eff. January 1, 2001.*

#### 04 NCAC 19L .0912 AUDIT

(a) The recipient's financial management systems shall provide for audits to be made by the recipient or at the recipient's direction, in accordance with the following:

(1) The recipient shall provide for an audit of its CDBG program on an annual basis for any fiscal year in which twenty-five thousand (\$25,000) or more in CDBG funds are received in accordance with the annual independent audit procedures set forth in G.S. 159-34;

(2) The CDBG program audit shall be performed in conjunction with the regular annual independent audit of the recipient and shall contain an examination of all financial aspects of the CDBG program as well as a review of the procedures and documentation supporting the recipient's compliance with applicable statutes and regulations;

(3) CDBG program funds may only be used to pay for the CDBG portion of the audit **costs; costs if more than three hundred thousand dollars (\$300,000) in all Federal Programs are used;**

(4) The recipient shall submit the Annual Audit Report to the Division, including the information identified in Paragraph (b) of this Rule, along with an Annual Performance Report as required by Rule .1101 of this Subchapter; and

(5) The Division may require separate closeout audits to be prepared by the recipient in accordance with Paragraph .0913(e) of this Section.

## **TEMPORARY RULES**

(b) Audits shall comply with the requirements set forth in this Paragraph:

- (1) Audits will include, at a minimum, an examination of the systems of internal control, systems established to insure compliance with laws and regulations affecting the expenditure of grant funds, financial transactions and accounts, and financial statements and reports of recipient organizations;
- (2) Financial statements shall include footnotes, comments which identify the statements examined, the period covered, identification of the various programs under which the recipient received CDBG funds, and the amount of the awards received;
- (3) Audits shall be made in accordance with the GENERAL ACCOUNTING OFFICE STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES AND FUNCTIONS, THE GUIDELINES FOR FINANCIAL AND COMPLIANCE AUDITS OF FEDERALLY ASSISTED PROGRAMS, any compliance supplements approved by the Federal Office of Management and Budget (OMB), and generally accepted auditing standards established by the American Institute of Certified Public Accountants;
- (4) The audit shall include the auditor's opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification;
- (5) The auditors' comments on compliance and internal control shall:
  - (A) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses;
  - (B) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of State or Federal laws and regulations that could have a material effect on the financial statements and reports;
  - (C) Contain an expression of positive assurance with respect to compliance with requirements for tested items and negative assurance for untested items;
  - (D) Comment on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies;
  - (E) Comment on corrective action taken or planned by the recipient;
- (6) Work papers and reports shall be retained for a minimum of ~~three~~ five years from the date of the audit report unless the auditor is notified in writing by the Division of the need to extend the retention period. The audit work papers shall be made available upon request to the Division and the General Accounting Office or its designees;
- (7) If during the course of the audit, the auditor becomes aware of irregularities in the recipient organization the

auditor shall promptly notify the Division and recipient management officials about the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets;

- (8) Selection of an independent auditor shall be in accordance with Rule .0908 of this Section.

(c) A "single audit," in which the regular independent auditor will perform an audit of all compliance aspects for all federal grants along with the regular financial audit of the recipient, is permissible. Where feasible, the recipient shall use the same auditor so that the audit will include the financial and compliance work under a single plan in the most economical manner.

(d) Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with CDBG funds. Recipients shall take the following affirmative action to further this goal:

- (1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable;
- (2) Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged firms;
- (3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms;
- (4) Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;
- (5) Encourage contracting with consortiums of small or disadvantaged audit firms when a contract is too large for an individual small or disadvantaged audit firm; and
- (6) Use the services and assistance, as appropriate, of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce in the solicitation and utilization of small or disadvantaged audit firms.

(e) All records, data, audit reports and files shall be maintained in accordance with Rule .0909 of this Section, unless otherwise stated in this Rule.

(f) The provisions of this Rule do not limit the authority of the Department to make audits of recipients' organizations.

*History Note: Authority G.S. 143B-10; 143B-431; 159-34;*

*42 U.S.C.A. 5304(d)(2),(e); 24 C.F.R. 44.6;*

*24 C.F.R. 85.36(e); 24 C.F.R. 570.492;*

*Eff. April 1, 1983;*

*Amended Eff. June 1, 1994; June 1, 1993; September 1, 1990; May 1, 1988;*

*Temporary Amendment Eff. January 1, 2001.*

SECTION .1000 – COMPLIANCE REQUIREMENTS

04 NCAC 19L .1002 CITIZEN PARTICIPATION

(a) Each applicant and recipient shall provide citizens with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the program. Each applicant and recipient shall provide adequate information to citizens, hold public hearings, provide for timely responses to citizens' complaints, and certify that it is following a detailed Citizen Participation Plan as in (b) through (h) of this Rule. All public hearings shall be held by the governing board of the applicant or recipient.

(b) Citizen participation in the application process.

(1) Each applicant for CDBG funds shall:

(A) Solicit and respond in a timely manner to views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas where activities are proposed. Applicants shall respond in writing to written citizen comments. Responses shall be made within ten calendar days of receipt of the citizen ~~comment~~ comment, when practicable.

(B) Provide technical assistance to facilitate citizen participation, where requested. The technical assistance shall be provided to groups representative of persons of low- and moderate-income that request such assistance in developing proposals. The level and type shall be determined by the applicant.

(C) Provide adequate notices of public hearings in a timely manner to all citizens and in such a way as to make them understandable to non-English speaking persons. Hearings must be held at times and locations convenient to potential or actual beneficiaries and with accommodations for the handicapped. A notice of the public hearing shall be published at least once in the nonlegal section of a newspaper having general circulation in the area. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. The notice of public hearing to obtain citizens' views after the application has been prepared, but prior to the submission of the application to the Division, shall contain a description of the proposed project(s) including the proposed project location, activities to be carried out, and the total costs of activities. The notice of the public hearing should also contain the language for submitting objections contained in the Part (b)(2)(A) of this Rule.

(D) Schedule hearings to obtain citizens' views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low- and moderate-income persons, members of minority

groups, handicapped persons, and residents of blighted neighborhoods and project areas.

(E) Conduct one public hearing during the planning process to allow citizens the opportunity to express views and proposals prior to formulation of the application, except that applicants in the Urgent Needs category are exempt from holding this public hearing.

(F) Conduct one public hearing after the application has been prepared but prior to submission of the application to the Division.

(2) Submitting objections to the Division.

(A) Persons wishing to object to the approval of an application by the Division shall submit to the Division their objections in writing. The Division shall consider objections made only on the following grounds:

(i) The applicant's description of the needs and objectives is plainly inconsistent with available facts and data,

(ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant, and

(iii) The application does not comply with the requirements of this Subchapter or other applicable laws.

(B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the facts and data upon which the objection is based.

(c) Citizen Participation Plan. Recipients shall develop and adopt, by resolution of their governing board, a written citizen participation plan developed in accordance with all provisions of this Rule and which:

(1) provides for and encourages citizen participation with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blight areas and of areas in which CDBG funds are proposed to be used;

(2) provides citizens with reasonable and timely access to local meetings, information, and records relating to the recipient's proposed and actual use of funds;

(3) provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in accordance with Part (b)(1)(B) of this Rule;

(4) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program in accordance with Paragraphs (b), (f), and (g) of this Rule;

(5) provides a procedure for developing timely written responses to written complaints and grievances within ten calendar days of receipt of the complaint. The procedure



## TEMPORARY RULES

shall include all provisions of Paragraph (d) of this Rule; and

- (6) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(d) The recipient shall develop and adopt a written complaint procedure to respond to citizen complaints involving the CDBG program. The complaint procedure shall be applicable through the life of the grant and available to the general public. It shall specify that the recipient will respond in writing to written citizen complaints within ten calendar days of receipt of the complaint. The procedure shall include a phone number for further information or clarification on the complaint procedure and shall identify any local procedures or appeals process that would normally be used by the recipient to address citizen complaints. The complaint procedure shall also state that if a citizen lodging a complaint is dissatisfied with the local response, then that person may direct the complaint to the North Carolina Division of Community Assistance.

(e) Citizen participation during program implementation. Citizens shall have the opportunity to comment on the implementation of a Community Development Program throughout the term of the program. Recipients shall solicit and respond to the views and proposals of citizens in the same manner as in Part (b)(1)(A) of this Rule.

(f) Citizen participation in the program amendment process.

- (1) Recipient procedures.

(A) Recipients proposing amendments which require prior Division approval in accordance with Rule .0910 of this Subchapter shall to conduct one public hearing prior to submission of the amendment to the Division in the same manner as in Part (b)(1)(C) of this Rule.

(B) Each recipient shall respond to citizen objections and comments in the same manner as in Part (b)(1)(A) of this Rule.

- (2) Submitting Objections to the Division.

(A) Persons wishing to object to the approval of an amendment by the Division shall make such objection in writing. The Division shall consider objections made only on the following grounds:

- (i) The recipient's description of needs and objectives is plainly inconsistent with available facts and data,
- (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the recipient, and
- (iii) The amendment does not comply with the requirements of this Section or other applicable laws and regulations.

(B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall

include the facts and data upon which the objection is based.

- (g) Citizen participation in the program closeout process.

(1) Recipients shall conduct one public hearing to assess program performance during the grant closeout process and prior to the actual closeout of the grant in the same manner as in Part (b)(1)(C) of this Rule.

(2) Recipients shall continue to solicit and respond to citizen comment in the same manner as in Part (b)(1)(A) of this Rule until such time as the grant program is closed.

(h) Persons may submit written comments to the Division at any time concerning the applicant's or recipient's failure to comply with the requirements contained in this Subchapter.

(i) All records of public hearings, citizens' comments, responses to comments and other relevant documents and papers shall be kept in accordance with Rule .0911 of this Subchapter. All program records shall be accessible to citizens in accordance with Rule .0911(b) of this Subchapter.

*History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A.*

*5304(a)(2); 24 C.F.R. 570.486;*

*Eff. July 1, 1982;*

*Amended Eff. August 1, 1998; June 1, 1993; September 1, 1990;*

*May 1, 1988; March 1, 1984;*

*Temporary Amendment Eff. January 1, 2001.*

### SECTION .1700 – SCATTERED SITE HOUSING CATEGORY

#### 04 NCAC 19L .1701 DESCRIPTION

Grants under the ~~Community Empowerment~~ Scattered Site Housing Category ~~shall improve self-sufficiency and economic opportunities~~ directs activities toward 100 percent low- and moderate-income persons. Scattered Site Housing projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities. Scattered Site Housing activities may be carried out in any location throughout the recipient's jurisdiction. Scattered Site Housing funds shall be distributed to eligible units of local governments in a three year rotating basis and periodically based on distribution plans and prior performance.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R.*

*570.483;*

*Eff. March 1, 1995;*

*Amended Eff. August 1, 1998;*

*Temporary Amendment Eff. January 1, 2001.*

#### 04 NCAC 19L .1702 ELIGIBILITY REQUIREMENTS

(a) Applications for ~~Community Empowerment~~ Scattered Site Housing funds must show that:

(1) ~~At least 51-100~~ percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons; and

(2) CDBG funds proposed for each activity shall meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds

**TEMPORARY RULES**

shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

~~(3) The project includes at least one dollar (\$1.00) of non-CDBG funds to match each dollar of CDBG funds requested, except for projects in counties designated by the Secretary of Commerce as Tier One Enterprise Areas as defined in G.S. 105-130.40(c) or areas designated by the federal government as Enterprise Zones.~~

(b) ~~Applicants shall have the capacity of administer a CDBG program.~~ The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs.

Applicants that show a lack of capacity will not be rated or funded.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482; 24 C.F.R. 570.483; Eff. March 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2001.*

**04 NCAC 19L .1703 SELECTION CRITERIA**

~~Localities that have Community Empowerment grants that are open may not apply for additional funds under this category until the grant is closed. In addition, local governments may have only one Community Empowerment application under review at one time.~~

Criteria for awards are:

- (1) community need;
- (2) community impact;
- (3) project design;
- (4) financial feasibility;
- (5) year of eligibility;
- (6) distribution plan; and
- (7) participation process.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Eff. March 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2001.*

**SECTION .2000 - INFRASTRUCTURE**

**04 NCAC 19L .2001 DESCRIPTION**

The infrastructure category includes activities in which funds are directed toward improving existing infrastructure or providing new infrastructure to existing neighborhoods with serious environmental or health problems and providing public infrastructure to Low-and moderate- income persons.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Temporary Adoption Eff. January 1, 2001.*

**04 NCAC 19L .2002 ELIGIBILITY REQUIREMENTS**

(a) The only eligible activities in infrastructure are related to public water and public wastewater (sewer) to benefit homes in residential neighborhoods. Street repairs only to the extent necessary to repair surfaces dug up in laying pipe may be included in the public water sewer budget line items. Infrastructure may not include more than one project. Projects may carry out either public water or public wastewater (sewer) activities or both.

(b) Applicants must insure that each Infrastructure activity benefits at least 51 percent low and moderate income persons. Additionally, applicants must ensure that activities do not benefit moderate income persons to the exclusion of low income persons, and that all funds are spent in support of a national objective.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Temporary Adoption Eff. January 1, 2001.*

**04 NCAC 19L .2003 SELECTION CRITERIA**

Criteria for awards are:

- (1) severity of needs;
- (2) benefit to low and moderate income persons;
- (3) local commitment;
- (4) treatment of needs; and
- (5) appropriateness and feasibility.

*History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Temporary Adoption Eff. January 1, 2001.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**Rule-making Agency:** *Commission for Health Services*

**Rule Citation:** *15A NCAC 21F .1204*

**Effective Date:** *January 8, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 130A-125(b1); S.L. 2000, c. 67, s. 11(b)*

**Reason for Proposed Action:** *Birthing facilities are required to report results of physiologic Newborn Hearing Screenings to the agency. Varied reporting mechanisms are employed by the birthing facilities resulting in inconsistent reporting, and incomplete and non-compatible data being submitted to the agency. The North Carolina General Assembly [G.S. 130A-*

## TEMPORARY RULES

125(b1) and S.L. 200 c. 67, s. 11(b)] directed the Commission for Health Services to adopt temporary and permanent rules to implement newborn hearing screening. The Newborn Hearing Screening Program was established under G.S. 130A-125. This agency has responsibility to report data received from hospitals. The agency has directed that a more efficient and effective means of collecting the data be developed in order to meet a legislative mandate for reporting to the Legislature. In response to this directive, a standardized reporting mechanism and protocols for collecting the data have been developed. In order to allow adequate time for the development and distribution of the forms, training for birthing centers on using the new forms, and development of capacity in the agency to receive and process the data, the date of the agency adoption of this Rule is January 8, 2001.

**Comment Procedures:** Written comments may be submitted to Marshall Tyson, Children's Special Health Services, Division of Public Health, 1928 Mail Service Center, Raleigh, NC 27699-1928 within 30 days after the date of publication of this issue in the NC Register. Copies of the proposed rule may be obtained by contacting Marshall Tyson at 919-715-3192.

### CHAPTER 21 – HEALTH: PERSONAL HEALTH

#### SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

#### SECTION .1200 – NEWBORN SCREENING PROGRAM

##### 15A NCAC 21F .1204 REPORTING REQUIREMENTS

(a) The attending physician shall order ~~and that~~ all persons performing physiologic hearing screenings for infants less than six months of age shall identify the child and report to the local health department of residence all infants who were not successfully screened or who failed to pass the physiologic hearing screening. When the infant's residence is out of state, the report shall be made to CSHS. These reports shall be submitted within 30 days after medical facility discharge, and within 30 days after the date of the screening following discharge and the date of any missed

~~scheduled appointment for such screening. North Carolina State Laboratory for Public Health the outcome of each hearing screening for all infants. All hearing screening reports shall be submitted simultaneously with each infant's blood specimen for genetic screening, or within five days following the date of each infant's hearing screening. Any missed scheduled hearing screening shall be reported simultaneously with each infant's blood specimen or within five days following the date of the missed appointment for such screening.~~

(b) All persons performing neonatal physiologic hearing screenings shall report quarterly to CSHS, within 30 days after the end of each quarter in the calendar year, the following:

- (1) Total number of neonates who were screened by each ~~tester and the number who passed that screening, with the results of tester, with~~ multiple screenings for the same neonate being clarified;
- (2) Total number of neonates whose parents or guardians objected to the hearing screening; and
- (3) Total number of live births, if the report is being submitted by a medical facility.

(c) All persons performing diagnostic auditory tests ~~which supercede or follow physiologic hearing screenings for infants less than six months of age shall identify the child and report the outcome of the diagnostic testing procedure to the local health department of residence, within 30 days following the infant's initial testing date and the date of any missed scheduled appointment for such testing. When the infant's residence is out of state, the report shall be made to CSHS, and those persons performing assessments for selection of amplification, for infants less than 12 months of age, shall identify the child and report the outcome of the diagnostic and amplification selection process to the North Carolina State Laboratory for Public Health, within five days following each evaluation date and the date of any missed scheduled appointment for such evaluations.~~

*History Note: Authority G.S. 130A-125;  
Temporary Amendment Eff. October 1, 1999;  
Eff. August 1, 2000;  
Temporary Amendment Eff. January 8, 2001.*

## RULES REVIEW COMMISSION

*This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, February 15, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, February 3, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

### RULES REVIEW COMMISSION MEMBERS

#### Appointed by Senate

Teresa L. Smallwood - Chairman  
John Arrowood  
Laura Devan  
Jim Funderburke  
David Twiddy

#### Appointed by House

R. Palmer Sugg – 1<sup>st</sup> Vice Chairman  
Jennie J. Hayman 2<sup>nd</sup> Vice Chairman  
Walter Futch  
Paul Powell  
George Robinson

### RULES REVIEW COMMISSION MEETING DATES

February 15, 2001  
March 16, 2001  
May 18, 2001  
April 20, 2001  
June 15, 2001

### *Log of Filings*

*December 21, 2000 through January 22, 2001*

#### NC OFFICE OF INFORMATION TECHNOLOGY SERVICES

Benchmark	09 NCAC 06A .0103	Amend
Board of Awards	09 NCAC 06B .1008	Amend
Protest Procedures	09 NCAC 06B .1009	Amend
Right to Hearing	09 NCAC 06B .1010	Amend
Request for Hearing	09 NCAC 06B .1011	Amend
Definitions	09 NCAC 06B .1012	Amend
General Provisions	09 NCAC 06B .1013	Amend
Duties of the Hearing Officer	09 NCAC 06B .1015	Amend
Settlement Conference	09 NCAC 06B .1017	Amend
Official Record	09 NCAC 06B .1029	Amend
General Delegations	09 NCAC 06B .1104	Amend

#### DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

Purpose	15 NCAC 02E .0102	Repeal
Scope	15 NCAC 02E .0103	Repeal
Definitions	15 NCAC 02E .0106	Amend
Delegation	15 NCAC 02E .0107	Amend
Declaration and Delineation of Capacity Use Area	15 NCAC 02E .0201	Repeal
Persons Withdrawing Groundwater in Capacity Use	15 NCAC 02E .0202	Repeal
Activities	15 NCAC 02E .0205	Repeal
Declaration and Delineation of Central Coastal	15 NCAC 02E .0501	Adopt
Withdrawal Permits	15 NCAC 02E .0502	Adopt
Prescribed Water Use Reductions in Cretaceous	15 NCAC 02E .0503	Adopt
Requirements for Entry and Inspection	15 NCAC 02E .0504	Adopt
Acceptable Withdrawal Methods	15 NCAC 02E .0505	Adopt
Central Coastal Plain Capacity Use Area Status	15 NCAC 02E .0506	Adopt
Definitions	15 NCAC 02E .0507	Adopt

**RULES REVIEW COMMISSION**

---

Scientific Educational Or Official Collecting Permits	15 NCAC 03I .0106	Repeal
Permits for Aquaculture Operations	15 NCAC 03I .0111	Repeal
Pound Net Sets	15 NCAC 03J .0107	Amend
Pots	15 NCAC 03J .0301	Amend
Permits to use Mechanical Methods for Oysters	15 NCAC 03K .0206	Amend
Permits to use Mechanical Methods for Oysters or	15 NCAC 03K .0303	Amend
Horseshoe Crabs	15 NCAC 03L .0207	Adopt
Spanish and King Mackerel	15 NCAC 03M .0301	Amend
Authorized Gear	15 NCAC 03O .0302	Amend
Procedures and Requirements to Obtain Permits	15 NCAC 03O .0501	Amend
Permit Conditions	15 NCAC 03O .0503	Amend
<b>TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS</b>		
Business Records	19 NCAC 02D .0219	Amend
Permits-Authority Application and Enforcement	19 NCAC 02D .0601	Amend
Permits-Issuance and Fees	19 NCAC 02D .0602	Amend
Permits-Weight Dimensions and Limitations	19 NCAC 02D .0607	Amend
Permits-House Moves	19 NCAC 02D .0612	Amend
Denial Revocation Refusal to Renew Appeal	19 NCAC 02D .0633	Amend

---

**AGENDA  
RULES REVIEW COMMISSION  
February 15, 2001**

Call to Order and Opening Remarks

Review of minutes of last meeting

Follow Up Matters

- A. Department of Agriculture Structural Pest Control Committee - 02 NCAC 34 .0502; Objection on 12/21/00 (DeLuca).
- B. Department of Agriculture - 02 NCAC 52B .0201; Objection on 12/21/00 (DeLuca).
- C. Department of Cultural Resources - 07 NCAC 4 S .0104; Objected on 12/21/00 (DeLuca).
- D. Department of Revenue - 17 NCAC 07B .1303; Extend Period of Review Objection on 12/21/00 (DeLuca)
- E. State Board of Massage & Bodywork Therapy - 21 NCAC 30 .0602; Objection on 12/21/00 (Bryan)
- F. State Personnel Commission - 25 NCAC 1E .1605; .1606; and .1607; Objection on 12/21/00 (Bryan)
- G. State Personnel Commission: 25 NCAC 1I .2310; Failure to make technical change 12/21/00 (Bryan).

Review of rules (Log Report #172)

V. Commission Business

VI. Next meeting: Thursday, March 15, 2001.

## ONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

### OFFICE OF ADMINISTRATIVE HEARINGS

#### Chief Administrative Law Judge

JULIAN MANN, III

#### Senior Administrative Law Judge

FRED G. MORRISON JR.

### ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter

James L. Conner, II  
Beryl E. Wade

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOL BEVERAGE CONTROL COMMISSION</b>				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
<b>BOARD OF MORTUARY SCIENCE</b>				
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
<b>HEALTH AND HUMAN SERVICES</b>				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 <sup>1</sup>	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
<b>Child Support Enforcement Section</b>				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00	
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00	
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00	
Richard Cook v. Department of Health & Human Services	99 CSE 0873 <sup>4</sup>	Chess	10/27/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	

**CONTESTED CASE DECISIONS**

Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Samuel E. Massenber, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 <sup>4</sup>	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00

**ONTESTED CASE DECISIONS**

Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 <sup>3</sup>	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 <sup>2</sup>	Conner	07/28/00
Rickey L. Gulledege v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Otis Hair v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 <sup>3</sup>	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00



**CONTESTED CASE DECISIONS**

Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00	
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00	
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00	
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00	
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 <sup>3</sup>	Conner	10/06/00	
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00	
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00	
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00	
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00	
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00	
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00	
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00	
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00	
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00	
Richard McCarson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01	
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01	
<b>Division of Social Services</b>				
Emma Burkes (Edwards v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 <sup>1</sup>	Wade	06/30/00	
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00	
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00	
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00	
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00	
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00	
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00	
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00	
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00	
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00	
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00	
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00	
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00	
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00	
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00	
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00	
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00	
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00	
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00	
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00	
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00	
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00	
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00	
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00	
Albemarle Mental Health Center, Developmental Disabilities: Substance Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	

**ONTESTED CASE DECISIONS**

Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR -DOFS	00 DHR 1382	Gray	11/21/00	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01	
<b>Division of Facility Services</b>				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00	
MariaGoretti Adaugo Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00	
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00	
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00	
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00	
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR 1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00	
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00	
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00	
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00	
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00	
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00	
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00	
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00	
<b>ENVIRONMENT AND NATURAL RESOURCES</b>				
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR 501
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00	
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00	
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR 696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00	
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR 343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00	
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00	
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00	
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR 1435
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR 693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00	
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00	
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00	
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00	
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00	
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00	
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00	
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00	
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00	
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00	
<b>Coastal Resources Commission</b>				
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR 342
<b>Division of Air Quality</b>				
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00	
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State	00 EHR 0227	Conner	08/31/00	

**CONTESTED CASE DECISIONS**

of North Carolina, Dept. of Environment and Natural Resources,  
Division of Air Quality

*Division of Land Resources*

James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of  
Land Resources 98 EHR 1292 Gray 10/16/00

*Division of Water Quality*

Fred J. McPherson v. DENR, Division of Water Quality 00 EHR 0160 Morrison 09/01/00  
Town of Wallace v. NCDENR, Division of Water Quality 00 EHR 0247 Lassiter 10/05/00  
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v.  
NCDENR, Division of Water Quality 00 EHR 0332 Conner 09/18/00

*Division of Waste Management*

A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management 99 EHR 0994 Mann 07/27/00 15:05 NCR 636

**JUSTICE**

Pierre Deberry Debnam v. NC Criminal Justice Education and  
Training Standards Commission 00 DOJ 0719 Morrison 08/15/00

*Alarm Systems Licensing Board*

John Martin Canter v Alarm Systems Licensing Board 00 DOJ 0573 Gray 06/02/00  
Kenneth Waits Putnam v. Alarm Systems Licensing Board 00 DOJ 0574 Gray 06/07/00  
James Thomas Wagg v. Alarm Systems Licensing Board 00 DOJ 1124 Lassiter 11/02/00  
Edwin Moore Stevens v. Alarm Systems Licensing Board 00 DOJ 1413 Lassiter 11/02/00

*Education and Training Standards Division*

Peter A. Davis v. Sheriffs' Education & Training Standards Comm. 99 DOJ 0531 Reilly 09/14/00  
James Everett Hill v. Sheriffs' Education & Training Standards Comm. 99 DOJ 1479 Reilly 04/10/00  
Juan Montez Jones v. N.C. Criminal Justice Education & Training  
Standards Commission 99 DOJ 1716 Conner 07/05/00  
Larry G. McClain v. Sheriffs' Education & Training Standards Comm. 99 DOJ 1721 Morrison 06/28/00  
Ersal Overton, III v. Sheriffs' Education & Training Standards Comm. 99 DOJ 0791 Mann 08/23/00 15:08 NCR 883  
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm. 00 DOJ 0056 Gray 03/01/00  
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm. 00 DOJ 0563 Gray 09/19/00  
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm. 00 DOJ 0907 Lassiter 11/02/00  
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm. 00 DOJ 0948 Lassiter 07/31/00  
Dexter Dwayne Boyd v. Criminal Justice Education & Training  
Standards Commission 00 DOJ 1366 Lassiter 05/26/00  
Rosamel T. Gresham v. Sheriffs' Education & Training Standards Comm. 00 DOJ 1557 Lassiter 12/20/00

*Private Protective Services Board*

Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective  
Services Board 00 DOJ 0004 Conner 08/14/00  
George Thomas Bond v. Private Protective Services 00 DOJ 0014 Conner 05/11/00  
Robert V. Croom and Robert V. Wooster v. Private Protective Services  
Board 00 DOJ 0058 Morrison 05/16/00  
Sharon Blackstock v. Private Protective Services Board 00 DOJ 0059 Morrison 05/16/00  
Samuel G. Slater v. Private Protective Services Board 00 DOJ 0090 Morrison 05/12/00  
Keith Lewis v. Private Protective Services Board 00 DOJ 0113 Connor 06/07/00  
John W. Fromm v. Private Protective Services Board 00 DOJ 0570 Conner 06/07/00  
Jason Stewart Duckett v. Private Protective Services Board 00 DOJ 0572 Gray 06/07/00  
Shannon Ray Nance v. Private Protective Services Board 00 DOJ 0609 Gray 06/07/00  
Franklin Delano Gann, Jr. v. Private Protective Services Board 00 DOJ 0670 Morrison 06/15/00  
William Junior Holmes v. Private Protective Services Board 00 DOJ 0671 Morrison 06/15/00  
Michael Burt v. Private Protective Services Board 00 DOJ 0672 Morrison 06/15/00  
Jason William Kane v. Private Protective Services Board 00 DOJ 0952 Wade 09/08/00  
Anthony Queen Williams v. Private Protective Services Board 00 DOJ 1005 Morrison 09/01/00  
Calvin Earl McRae v. Private Protective Services Board 00 DOJ 0736 Morrison 08/02/00

**PUBLIC INSTRUCTION**

Doris G. Branch v. NC Department of Public Instructions 98 EDC 0368 Gray 10/08/00 15:13 NCR 1233  
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education 99 EDC 0389 Gray 08/23/00  
Charlie Lee Richardson v. Department of Public Instruction 99 EDC 0788 Reilly 04/11/00 15:01 NCR 45  
Dale Y. Farmer v. Department of Public Instruction 00 EDC 0373 Gray 05/26/00  
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters  
for Weston Harold Waters 00 EDC 0465 Wade 08/11/00  
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald  
Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie  
Smith, Frank Smith, and Angela Smith v. NC State Board of Education  
and Cleveland County Board of Commissioners 00 EDC 0800 Morrison 06/26/00 15:04 NCR 492  
James William Stockstill v. Orange County Board of Education, Orange  
County Schools and Randy Bridges 00 EDC 1261 Conner 09/28/00  
Christopher Paul Thompson v. Polk County School System 00 EDC 1291 Conner 12/28/00

**ONTESTED CASE DECISIONS**

**DEPARTMENT OF INSURANCE**

Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan 98 INS 1662 Gray 05/25/00

**MISCELLANEOUS**

Nancy York Vorys v. Raleigh Police Department 00 MIS 1436 Gray 10/27/00

**STATE PERSONNEL**

Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services 95 OSP 1011 Gray 08/29/00

Michele Smith v. Cumberland Co. Dept. of Social Services 97 OSP 1344 Morgan 07/11/00

Marshe Morgan v. Black Mount Center, NC DHHS 98 OSP 1302 Gray 07/11/00 15:05 NCR 624

Pat Hovis v. Lincoln County Department of Social Services 98 OSP 1348 Conner 11/15/00

Larry Wellman v. Department of Health & Human Services 99 OSP 0484 Reilly 05/11/00 15:01 NCR 47

Betty R. Holman v. Broughton Hospital 99 OSP 0580 Hunter 05/08/00

Doris A. Archibald v. Dare County Health Department 99 OSP 0622 Gray 08/10/00

Mack Reid Merrill v. NC Department of Correction 99 OSP 0627 Wade 08/23/00 15:07 NCR 772

Russell J. Suga v. Employment Security Commission of NC 99 OSP 0768 Gray 06/23/00

Glenn Roger Forrest v. NC Department of Transportation 99 OSP 0853 Lassiter 08/24/00 15:07 NCR 781

Sarah C. Hauser v. Forsyth Co., Department of Public Health 99 OSP 0923 Lassiter 04/20/00 15:01 NCR 5

Larry Mayo v. Employment Security Commission of NC 99 OSP 1023 Wade 06/30/00

Michael Duane Maxwell v. Dept. of Health & Human Services 99 OSP 1068 Reilly 08/03/00 15:09 NCR 924

Joel T. Lewis v. Department of Correction 99 OSP 1116 Reilly 05/31/00

Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet 99 OSP 1142 Morrison 08/11/00

Van Sutton v. Office of Juvenile Justice/Dobbs School 99 OSP 1204 Gray 07/13/00

Benny Callihan v. Department of Correction 99 OSP 1381 Wade 09/06/00

Russell J. Suga v. Employment Security Commission of NC 99 OSP 1649 Gray 06/09/00 15:04 NCR 508

Thelma T. Utley v. NC State University 99 OSP 1708 Conner 12/08/00

Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center 99 OSP 1757 Anderson 08/28/00

Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction 00 OSP 0013 Conner 07/05/00

Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol 00 OSP 0029 Morrison 08/08/00

Robert Boyd Choat v. Department of Correction 00 OSP 0102 Reilly 07/24/00

Larry Campbell v. Wildlife Resources Commission 00 OSP 0117<sup>5</sup> Reilly 09/28/00

Larry Campbell v. Wildlife Resources Commission 00 OSP 0118<sup>5</sup> Reilly 09/28/00

Vicky Ruffin-Jenkins v. Sparc Academy 00 OSP 0207 Connor 06/26/00

Robert L. Swinney v. NC Department of Transportation 00 OSP 0281 Morrison 12/20/00 15:14 NCR 1392

Jesse C. Whitaker v. Facilities Operations (NCSU) 00 OSP 0342 Chess 07/11/00

Gladys M. Sanders v. NC Department of Correction 00 OSP 0362 Gray 09/27/00

Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton 00 OSP 0443 Lassiter 07/24/00

Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction 00 OSP 0460 Chess 10/24/00

Addie M. Williams v. Pender Correctional Inst., Dept. of Correction 00 OSP 0562 Conner 09/12/00

Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons 00 OSP 0586 Chess 07/10/00

Michael Jackson v. University Graphics, NC State University 00 OSP 0621 Lassiter 08/16/00

Marvin Clark v. NC Department of Correction 00 OSP 0623 Gray 08/03/00

James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins 00 OSP 0652 Mann 07/27/00

Mark Esposito v. NCDOT/Aviation, Bill Williams, Director 00 OSP 0791 Lassiter 07/24/00

Marilyn R. Horton v. Gaston-Lincoln Mental Health 00 OSP 0912 Morrison 10/19/00

Jeffrey L. Teague v. NC Department of Correction 00 OSP 0978 Chess 10/27/00

Bernadine Johnson v. Department of Correction 00 OSP 1118 Morrison 11/20/00

Robert C. Adams v. NC Department of Labor 00 OSP 1185 Conner 11/28/00

Pamela DeVose v. Durham County DSS 00 OSP 1189 Conner 12/28/00

Steven Allen Slocum v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol 00 OSP 1203 Conner 12/28/00

Pamela R. Smith v. NC Department of Public Instruction 00 OSP 1229 Conner 11/09/00

Wayne M. Wise v. NCCU-WNCU 00 OSP 1269 Gray 01/09/01

Dora P. Pettiford v. NC Department of Health & Human Services 00 OSP 1279 Lassiter 09/25/00

David A. Greats v. NC Department of Correction 00 OSP 1282 Conner 11/09/00

Wayne Davis v. Shelby City Schools 00 OSP 1402 Lassiter 12/20/00

Ethel Hines v. NC Agricultural & Technical State University 00 OSP 2139 Morrison 12/21/00

**STATE TREASURER**

Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division 99 DST 1475 Mann 05/30/00 15:05 NCR 633

**DEPARTMENT OF REVENUE**

Eddie B. Thomas v. NC Department of Revenue 00 REV 0530 Gray 08/24/00

Samuel W. Hinshaw v. NC Department of Revenue 00 REV 1008 Gray 12/20/00

**UNIVERSITY OF NORTH CAROLINA**

**CONTESTED CASE DECISIONS**

---

Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00
Ande West v. UNC Hospitals	00 UNC 1267	Conner	12/14/00
Lisa Morelli v. SODCA Representative, UNC Hospitals	00 UNC 1328	Gray	12/28/00
<b>NC BOARD OF ETHICS</b>			
H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00

**ONTESTED CASE DECISIONS**

---

STATE OF NORTH CAROLINA

COUNTY OF DUPLIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
00 EHR 0072

---

LEONARD F. SUTTON  
Petitioner,

v.

DIVISION OF FOREST RESOURCES  
Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**RECOMMENDED DECISION**

---

This matter came on for hearing before Fred G. Morrison, Jr., Senior Administrative Law Judge, on July 7, 2000, in Raleigh, North Carolina.

**APPEARANCES**

Petitioner: Leonard F. Sutton  
2300 Dorking Road  
Richmond, VA 23236  
Appeared Pro Se

Respondent: David G. Heeter  
Assistant Attorney General  
N.C. Department of Justice  
Raleigh, NC 27602-0629  
Attorney for Division of Forest Resources

**ISSUE**

Did the Division of Forest Resources err by refusing to pay \$ 924.00 in cost share funds to Leonard F. Sutton under the Hurricane Fran Reforestation and Rehabilitation Program?

**STATUTES AND RULES AT ISSUE**

N.C. Gen. Stat. 113A-176, *et seq.*  
Rule 15A N.C.A.C. 1B Section .0200  
Rule 15A N.C.A.C. 9C Section .0900  
Fran Reforestation and Rehabilitation Program Guidelines, September, 1997  
Forest Development Program-Procedure, March, 1999

Upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

**FINDINGS OF FACT**

1. The Petitioner, Leonard F. Sutton, owns a tract of land off State Road 1506 in Duplin County, North Carolina.
2. In 1996, Hurricane Fran damaged the woodlands on the tract, and the timber was salvaged.

## *CONTESTED CASE DECISIONS*

---

3. The Petitioner requested financial and technical assistance from the Respondent, Division of Forest Resources, N.C. Department of Environment and Natural Resources, in reforesting the tract.

4. Pursuant to the Forest Development Program, 15A N.C.A.C. 9C Section .0900, Laura Bartson, Service Forester, DFR, prescribed certain management recommendations to help the Petitioner restore the woodlands for future timber production. Respondent's Exhibit 1.

5. The prescribed management recommendations were set forth in a letter from Ms. Barston to Leonard Sutton and an attached Woodland Management Plan, both dated September 29, 1998. R-1.

6. Her letter stated that Mr. Sutton was eligible for cost share assistance under the Fran Reforestation and Rehabilitation Program because Duplin County was one of the counties damaged by the 1996 hurricane. The letter further stated "Should you follow through with this project as outlined in the Woodland Management Plan, you will be eligible to receive cost share payment from the FRRP." R-1.

7. The Woodland Management Plan had been approved by Robert Houseman, District Forester, DFR. Id.

8. The Plan divided the Petitioner's property into four areas. Areas 1 and 2 were to be regenerated naturally. Areas 3 and 4 were to be hand-planted with improved coastal loblolly pine. Id.

9. At issue is the Respondent's refusal to pay cost share funds to Mr. Sutton for replanting Area 3, not the rest of the property.

10. In a column identified as "Recommended Management Practices & Prescription for Carrying Out Treatment", the Woodland Management Plan for the Petitioner provided for replanting Area 3 as follows:

Hand plant improved coastal loblolly pine seedlings, treated for Pales weevil and deer browse, on a 7x10 foot spacing, or approximately 622 trees per acre. Id.

11. To obtain cost share funding, the Petitioner was required to sign a Fran Reforestation and Rehabilitation Project Record. Under "Practices Needed", it indicated that Area 3 was to be hand-planted with loblolly pines at the prevailing rate of \$70.00 per acre. R-2 and 6.

12. The FRRP Project Record further provided:

This certifies that I ... (2) intend to carry out and maintain for ten years the forestry practice(s) described above and those environmental measures related to the practice(s) on land owned by me as outlined in the Forest Management Plan approved by Robert Houseman ... (6) agree to refund all or part of the funds paid to me if before the expiration of the 10 year maintenance period I ... (b) fail to maintain the practice(s) as stated in the Forest Management Plan.... Id.

13. In a letter dated November 14, 1998, Stanford Adams, Director, DFR, advised Mr. Leonard that cost share funding in the amount of \$1,260.00 had been approved. R-3. This amount covered the hand planting of pines on Areas 3 and 4.

14. On March 4, 1999, a work crew supervised by Bart Copeland, an employee of Georgia-Pacific Corporation, began replanting pines on the Sutton property. Tpp. 51-53.

15. In the afternoon of the same day, Jeffrey Marshburn, Assistant County Ranger, DFR, did a quality control check of the replanting being done on the Sutton property. Id. He did everything he would normally do, and it was getting dark when he left. Tp. 68.

16. Mr. Marshburn established quality control plots to determine how many trees had been planted within a circular area 11.75 feet in diameter. Based on seven plots, he determined that the trees were being planted "entirely too close." Tpp. 51-53.

17. He calculated that the spacing between the seedlings averaged 5 by 8 feet instead of 7 by 10 feet as prescribed in the Woodland Management Plan. Id.

## *ONTESTED CASE DECISIONS*

---

18. The number of trees planted per acre affects their yield, quality, and value, and the number of trees prescribed in the Plan is the most desirable spacing for saw timber. Tpp. 73-74; 114.

19. Mr. Marshburn advised Mr. Sutton that he was planting too many trees per acre, and Mr. Sutton replied that he wanted more trees than the Plan called for because someone who had been a forester for many years told him the denser the better. Tpp. 53-54.

20. Mr. Marshburn advised Mr. Copeland to follow the Management Plan. He warned Mr. Sutton that he would jeopardize his cost share funding if he did not follow the Plan. Id.

21. When Mr. Marshburn left, the trees were being planted at the correct spacing; however, the following morning Mr. Copeland telephoned him and said Mr. Sutton had ordered the crew to resume planting trees at a spacing of 6 by 8 feet. Tpp. 54-57.

22. Mr. Marshburn recorded the results of his March 4, 1999, quality inspection and his March 5, 1999, telephone conversation with Mr. Copeland. R-4 and 5.

23. Mr. Marshburn and Ms. Barston reinspected the Sutton property on March 29, 1999. They established 24 quality control plots and determined that 33 acres had actually been replanted and that the average density was approximately 1,000 trees per acre with up to 1,400 trees per acre in some areas. Tpp. 58-59; R-8; Tpp. 126-27; R-13.

24. Ms. Barston sent Mr. Sutton a letter dated April 7, 1999, in which she advised him that Area 3 had been replanted at a denser spacing than provided in his Plan and that cost share funding would therefore be withheld. R-8.

25. Mr. Sutton telephoned Mr. Robert Houseman seeking the reversal of Ms. Barston's determination. Mr. Sutton asked Mr. Houseman four questions which he answered in a letter to Mr. Sutton dated May 26, 1999. R-9.

26. After reviewing the facts, Mr. Houseman stated that he would not reverse the decision to withhold funding since the spacing change was not approved prior to planting the trees. Id.

27. The Forest Development Program-Procedure provides as follows:

### Modifications to Approved Projects

Changes in recommended practices may be made after an application has been submitted or approved. This should only be necessary when unforeseen circumstances have occurred. In such cases, an amendment to the management plan must be made and approval received from the Central Office prior to starting work. 4910.3. Amendment 179, March 8, 1999. [The same procedures without section numbers are found in R-11.]

28. Changes in completed practices may also be allowed but the "requested revisions must show need, be justified, and receive approval....This should be treated as an exception rather than accepted procedure."4910.31.

29. Mr. Sutton never sought formally to amend his Management Plan before starting to plant the trees, and he offered no unforeseen circumstances to justify not following his Plan.

30. Mr. Houseman also indicated to Mr. Sutton that the cost share funding for replanting 33 acres within Area 3 of his property was \$1,260.00. R-9. Mr. Houseman later determined that he had made a mathematical error and corrected the funding amount to \$924.00. Tpp. 100-02; R-10.

31. On June 23, 1999, some three months after the replanting, and February 7, 2000, some 11 months after the replanting, the number of trees which had survived was less than the number planted; however, cost share funding is paid for planting the number of trees prescribed in the Management Plan, not the number of trees which survive. Tpp. 102-03; 134-135; 147-149.

32. Mr. Sutton disputed Mr. Marshburn's count of the number of trees which were actually planted on March 4 and 5, 1999, but had not done an independent count at that time. Tp. 148.



## *CONTESTED CASE DECISIONS*

---

33. Mr. Stan Adams, Director, DFR, asked Mike Thompson, Section Chief, Forest Management and Development, DFR, to review Mr. Sutton's internal appeal of Mr. Houseman's decision to withhold cost share funding.

34. After reviewing the file and talking to Mr. Sutton, Mr. Marshburn, and Mr. Houseman, Mr. Thompson recommended to Mr. Adams that he deny the cost sharing funds.

35. Mr. Adams signed a letter drafted by Mr. Thompson upholding the decision to withhold funding and Mr. Sutton timely filed a Contested Case Petition with the Office of Administrative Hearings seeking administrative review.

36. In making his recommendation to Mr. Adams, Mr. Thompson relied on many of the same rules, procedures, and documents that were relied upon by Laura Barston, Jeffrey Marshburn, and Robert Houseman, and he agreed with their interpretation and application of them. Tpp. 95-103-166.

37. Mr. Thompson also relied upon other provisions, such as the opening sentence in the Forest Development Program-Procedure which provides that: "An approved forest management plan must be on file with the Division of Forest Resources before the landowner may apply for cost sharing on practices as prescribed in the plan." R-12, p. 1.

38. In addition, he relied upon 15A NCAC 9C .0902(h) which provides that:

Cost sharing payments will be made upon certification by the Division of satisfactory completion of the practices as prescribed in the management plan. Determination of satisfactory completion will include an assessment of the proper use of approved practices in relation with the silviculture need of the land....

39. Based on these and other provisions, Mr. Thompson understood that cost share funding could only be paid for practices prescribed in a Management Plan. Tpp. 121-26.

40. The DFR has an obligation to monitor whether approved Management Plans are followed so that public funds do not go to landowners who use them unwisely. Tpp. 155-56.

41. A landowner is not entitled to cost sharing, but must show a need for such funds and follow an approved Management Plan. Tpp. 157-58.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter and there is no question of misjoinder or nonjoinder.

2. The burden of proof is upon the Petitioner to show by the greater weight of the evidence that the Respondent erred in determining that he was not eligible for cost sharing payments in connection with the subject property.

3. Under the Forest Development Program, cost sharing payments will not be made to landowners unless the Division of Forest Resources certifies that the practices as prescribed in the Management Plan have been satisfactorily completed. Rule 15A NCAC 9C .0902(h). The Forest Development Program-Procedure provides that landowners must have an approved Management Plan before they may apply for cost sharing payments for practices as prescribed in the Plan. 4910.1.

4. When he signed the Fran Reforestation and Rehabilitation Program Project Record, the Petitioner agreed to carry out and maintain for ten years the practices prescribed in his Forest Management Plan. He further agreed that he would be ineligible for cost sharing funding if he did not carry out and maintain such practices.

5. The Petitioner's approved Management Plan prescribed hand planting Area 3 of his property with loblolly pines on a 7 x 10 foot spacing or approximately 622 trees per acre.

6. The Petitioner planted Area 3 of his property or caused Area 3 to be planted with loblolly pines at a spacing that was denser than prescribed. The number of trees averaged approximately 1,000 per acre. In some areas, there were 1,400 trees per acre.

**ONTESTED CASE DECISIONS**

---

7. The Petitioner became ineligible for cost sharing funding when he failed to follow the spacing prescription in his approved Plan. He willfully failed to follow his Plan after being warned that the trees in Area 3 were being planted too close together.

8. The Petitioner has not shown any justification for failing to follow his approved Management Plan, nor has he shown any unforeseen circumstances or other reason for approving an after-the-fact amendment to his approved Plan.

9. The Petitioner would have been eligible for \$924.00 in cost sharing funding if the trees on Area 3 had been planted as prescribed in his Plan.

10. The Respondent did not err in refusing to pay the Petitioner \$924.00 in cost share funding since the trees on Area 3 of his property were planted at a significantly greater density than prescribed in his approved Management Plan.

Based on the above Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

That the Respondent's decision to deny \$924.00 in cost sharing funding to the Petitioner be left undisturbed.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699, in accordance with North Carolina General Statute § 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a).

The agency is required by G.S. § 150B-36(b) to serve a copy of the final decision on all parties and on the Office of Administrative Hearings. The final agency decision will be made by the Secretary of the Department of Environment and Natural Resources.

This the 18<sup>th</sup> day of December, 2000.

-----  
Fred G. Morrison Jr.  
Senior Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA  
COUNTY OF PASQUOTANK

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
98 DHR 1598

Albemarle Mental Health Center,  
Developmental Disabilities: Substance Abuse Services,  
Petitioner,  
v.  
N.C. Department of Health and Human Services, Division  
of Medical Assistance  
Respondent,  
and  
N.C. Council of Community Mental Health, Developmental  
Disabilities and Substance Abuse Programs, Inc.,  
Intervenor.

RECOMMENDED DECISION

This matter came on for hearing before the undersigned temporary administrative law judge, on June 20, 2000, and August 24, 2000, in Raleigh. John S. Morrison represented the petitioner. Claud R. Whitener, III, and Grady Balentine represented the respondent. Steven Mansfield Shaber and Pamela A. Scott represented the intervenor. On the first day, petitioner introduced five exhibits and presented six witnesses; the respondent introduced three exhibits and presented four witnesses. On the second day, three witnesses were recalled. The undersigned gave the parties more time to settle the matter, but eventually set December 8, 2000, as the date to file proposed recommended decisions.

ISSUES

- 1. Were the 1998 changes made by the respondent in reimbursement methodology for Y-Code mental health services made in accordance with the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-1, et seq., and N.C. Gen. Stat. § 108A-55?
- 2. Did the petitioner suffer damages as the result of the 1998 changes?

FINDINGS OF FACT

- 1. The parties received notice of the hearing by certified mail more than 15 days prior to the hearing and stipulated that notice of hearing was in all respects proper.
- 2. The petitioner is an area mental health authority established pursuant to N.C. Gen. Stat. § 122C-115 et. seq., and is a body politic and political subdivision of the state of North Carolina serving as a public mental health agency for the northeastern North Carolina counties of Dare, Currituck, Camden, Pasquotank, Perquimans and Chowan.
- 3. The respondent is the single state agency responsible for administering the medical assistance ("Medicaid") program in North Carolina pursuant to 42 C.F.R. 431.10 and N.C. Gen. Stat. § 108A-54.
- 4. The intervenor is a nonprofit corporation that is an association of area mental health authorities in North Carolina. Thirty-eight of the thirty-nine area mental health authorities in North Carolina, including the petitioner, are members of the North Carolina Council of

## *ONTESTED CASE DECISIONS*

---

Community Mental Health, Developmental Disabilities and Substance Abuse Programs. By Order dated March 5, 2000, the Council was allowed to intervene in this contested case hearing.

5. The petitioner provides mental health, developmental disability, and substance abuse services to eligible individuals residing in the six northeastern North Carolina counties of Dare, Currituck, Camden, Pasquotank, Perquimans and Chowan. The petitioner has approximately 250 employees and a seventeen million dollar budget. It provides mental health services to approximately 2800 patients per day. The source of petitioner's funding is private direct pay and federal, state and local sources. A significant portion of the petitioner's clientele is indigent and the cost of their services is funded through Medicaid reimbursements.

6. The petitioner is an eligible provider authorized to provide mental health, developmental disability, and substance abuse services to Medicaid eligible individuals. As such, the petitioner bills the respondent for services provided to Medicaid eligible individuals by either the petitioner or other health care providers under contract to the petitioner.

7. Many of the services provided by the petitioner to Medicaid eligible individuals are assigned "Y" billing codes by the respondent and are referred to as "Y-code services" which are reimbursed by Medicaid through the Division of Medical Assistance.

8. The respondent establishes reimbursement rates for all eligible health-related services covered by Medicaid pursuant to 42 C.F.R. Parts 430, 431, 433 and 447, N.C. Gen. Stat. § 108A- 55, 10 N.C.A.C. 26H and the State Medicaid Plan.

9. 42 C.F.R § 447.201(b) requires the State Medicaid Plan to describe the policy and methods to be used in setting payment rates for each type of service included in the State's Medicaid program.

10. N.C. Gen. Stat. § 108A-55(a) provides in pertinent part:

The Department may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person...

11. N.C. Gen. Stat. § 108A-55(c) provides in pertinent part:

The Department **shall** reimburse providers of services, equipment, or supplies under the Medical Assistance Program in the following amounts:

(1) The amount approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration approves an exact reimbursement amount;

(2) The amount determined by application of a method approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration approves the method by which a reimbursement amount is determined, and not the exact amount.

12. N.C. Gen. Stat. § 108A-55(c) continues:

The Department **shall** establish the methods by which reimbursement amounts are determined in accordance with Chapter 150B of the General Statutes. A change in a reimbursement amount becomes effective as of the date for which the change is approved by the Health Care Financing Administration of the United States Department of Health and Human Services. The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the Senate Appropriations Subcommittee on Human Resources or the Joint Legislative Commission on Health Care Oversight on any change in a reimbursement amount at the same time as it sends out public notice of this change prior to presentation to the Health Care Financing Administration. (emphasis added)

13. 10 N.C.A.C. 26H .0503 establishes that reimbursement for mental health clinic services, such as those provided by the petitioner, will be made on a fee schedule as developed by the respondent.

14. On March 30, 1990, the respondent received approval from the Health Care Financing Administration, pursuant to 42 C.F.R. Part 430, to amend its State Medicaid Plan by adding provisions governing payments for other diagnostic, screening, preventative and rehabilitative

## *CONTESTED CASE DECISIONS*

---

services. This plan amendment became effective July 1, 1989, and is located at Attachment 4.19-B, Section 13, Page 1 of the State Medicaid Plan. This amendment provides:

Payments for other diagnostic, screening, preventative and rehabilitative services provided by qualified providers are based on rates established for each type of covered service. The rates for all covered services are hourly rates reimbursed in quarter hour units. The prospective rates in the first year of this plan are based on the actual 1988-89 average unit cost of each type of service. **The prospective rates are adjusted annually to equal the actual unit cost as determined in the cost analysis for the most recent year available. The cost determinations are based on the weighted average, reflecting the frequency of each type of service, unit costs for qualified providers participating in the North Carolina Pioneer Project.** In the base year, five (5) area programs implemented the Pioneer Project cost accounting structure. In the second year 17 programs are planned to be included; in the third year 36 programs; and finally all 41 area programs in the fourth year. The phase-in was accomplished to evenly distribute the costs associated with implementing the cost accounting structure. The initial 5 area programs represented a range of programs from the smallest to the largest in terms of population, budget and staff. This methodology complies with 42 C.F.R. 447 .325. (emphasis added).

This plan amendment is a statement of general applicability that implements federal and state Medicaid statutes and federal Medicaid regulations. It also describes the required rate-setting practices or procedures of the respondent.

15. Petitioner and intervenor do not challenge the legality of Attachment 4.19-B, Section 13, Page 1 of the State Medicaid Plan (hereafter, "4.19-B, Section 13"). The respondent likewise agrees that this is the formula that has previously been used in calculating Y-code Medicaid reimbursement rates. Therefore, the undersigned finds the same as a fact.

16. Since July 1, 1989, the respondent has established new reimbursement rates annually for each Y-code service by using the above weighted average methodology in that the respondent took the cost of providing each Y-code service on a statewide basis divided by the total units of service provided on a statewide basis.

17. The respondent has always used statewide cost and utilization figures to establish statewide reimbursement rates; it has never used area program specific cost and utilization figures to set area program specific reimbursement rates.

18. 4.19-B, Section 13, requires respondent to calculate rates based on actual unit costs and weighted averages. It does not permit respondent to impute costs or to impute units of service in order to estimate unit costs. Additionally, "**rates are adjusted annually to equal the actual unit cost as determined in the cost analysis for the most recent year available.**"

19. In August 1998, the respondent established for the period in question new statewide reimbursement amounts for Y-code services. While area programs were given notice of this change in June of 1998, the amounts were not approved in accordance with the rulemaking requirements in Chapter 150B of the North Carolina General Statutes. Appropriate legislative authorities were not notified and the petitioner was not given the opportunity for substantial input as to the effect these rate changes would have upon petitioner and its clientele.

20. For the period in question, respondent used imputed units of service, rather than actual units of service, to estimate unit costs. Respondent did not calculate actual unit costs as required by 4.19-B, Section 13. It is respondent's position that such action was necessary inasmuch as it could not get what it contended was adequate data from various mental health centers. However, the respondent did not establish sufficient reasons not to comply with the law. Moreover, the respondent's calculation methods were not consistent with generally accepted accounting principles and were additionally flawed by simple computational errors. When evaluated by standards of the accounting profession and statistical analysis, respondent's computations were unlawful and arbitrary and capricious.

21. By using imputed units of service, respondent changed "the method by which reimbursement amounts are determined" as those words are used in G.S. 108A-55(c). Respondent changed this method without following the procedural requirements contained in the same subsection of the law.

22. The reimbursement amount for each Y-code service that was established by respondent in August, 1998, was different from the reimbursement amount in place prior to the change. While the reimbursement amount for more than half of the Y-code services increased from twelve to forty-four percent, the reimbursement amount for seven services decreased. The reimbursement amounts for high-risk intervention and CBI services decreased significantly by forty-three to fifty-one percent.

## *ONTESTED CASE DECISIONS*

---

23. 4.19-B, Section 13, mandates that rates are to be determined in a way that reflects each type of service. Respondent sets a different Y-code rate for each type of service. 4.19-B, Section 13 requires these rates to reflect "actual unit costs of the services". Respondent's computational methodology did not use actual unit cost nor weighted averages and is, therefore, inconsistent with the 1989 plan amendment.
24. Petitioner does not challenge all of its 1998 "Y-Code" rates, but rather focuses on two rates, specifically high risk intervention and CBI, which dropped from forty-three percent to fifty-one percent. The undersigned recognized, without objection, Mr. Lou Cannon, C.P.A. as an expert in governmental accounting. Mr. Cannon carefully reviewed the respondent's methodology and the petitioner's costs in providing the services. His testimony, confirmed by Charlene Allen, Petitioner's Financial Officer, was that petitioner lost one and a half million dollars in Medicaid reimbursement because of the 1998 change in "Y-Code" rates for these two services. This testimony was not rebutted and the undersigned finds that Mr. Cannon's testimony was credible.
25. The petitioner is harmed by the current rates because it is unable to provide services at the current changed "Y-Code" rate it now receives for high risk intervention services and outpatient treatment services despite the fact that the petitioner is an economically and efficiently-run provider of mental health services. Petitioner will be unable to contract with private providers to furnish these "Y-Code" rate services even though the providers themselves are also economically and efficiently-run.
26. Because the service area of petitioner is rural, sparsely populated and has no major metropolitan area, the petitioner's cost in delivering services is higher than many other mental health centers in the state. The respondent's action only makes things worst for the clients that the petitioner attempts to serve.
27. Medicaid "Y-Code" services are vitally important program and its impact has a substantial effect on families, individuals, the Court systems and public schools.
28. Medicaid funding, which is the sole financial source for the "Y-Code" services is made up of approximately sixty-three percent (63%) federal contributions and thirty-seven percent (37%) state contributions.
29. Before August 1, 1998 the Medicaid funding received by the petitioner was not entirely sufficient to adequately fund "Y-Code" rate services. However, through judicious management and revenue from other sources, the petitioner was able to adequately cover the cost of the services.
30. As a result of the aforementioned change in "Y-Code" rate reimbursement, incorrectly computed by the respondent, the petitioner received approximately one and one-half million dollars less than it would have received under the previous reimbursement system that utilized weighted averages and not "imputations."
31. As a direct result of respondent's action, the petitioner has and will continue to be in jeopardy of failing to provide mental health services to its clientele as mandated by the Legislature.
32. The respondent presented the testimony of Mr. Adam Holtzman, a statistician with the Division of Mental Health, who previously testified for the petitioner that from a statistical analysis the "Y-Code" rate reimbursements were formulated in an arbitrary and capricious manner. The respondent called him to testify that change in other rates yielded more revenues to the petitioner. However, these additional revenues were dedicated for performing other services and more realistically reflected the actual cost for providing those services and therefore did not remedy the deficiencies and loss of income suffered by the petitioner. As explained by Mr. Cannon, an expert in governmental accounting, Mr. Holtzman's testimony did not address anything more than revenues. It did not take into account a cost analysis and therefore was unpersuasive in changing a finding of fact based on the testimony of Mr. Cannon and Ms. Allen that the petitioner in fact lost one and one-half million dollars as a result of a change in "Y-Code" reimbursement rates which took effect on August 1, 1998.
33. Despite the language of Section 4.19 requiring reimbursements on "actual unit costs", the respondent has been making calculations based on a statewide average of public mental health cost rather than the cost of service and delivery within a particular mental health area. The unacceptable result of this methodology was clearly set forth in the cross-examination by Petitioner of the Director of the Division of Medical Assistance, which the Court hereby quotes verbatim:

## CONTESTED CASE DECISIONS

---

*Question by Mr. Morrison: So, we're going to distribute about \$200 Million to thirty-nine mental healths, and about half of them are not going to get as much money as they need, and the other half are going to get more money than they need. Is that correct?*

*Answer by Mr. Gambill: Yes, sir.*

*Question: And, the folks that get more money than they need, don't turn around—let's say, in Asheville they've got more money than they needed. They're not going to turn around and give that to the people in Elizabeth City who didn't get enough, are they?*

*Answer: I can't debate that with you, sir.*

*Question: There's no procedure set up for that.*

*Answer: To my knowledge, there is none. (Transcript pp. 182-183)*

*Question: You're an expert. What is your personal opinion?*

*Answer: My opinion is, sir, that a payment rate should be reflected to the provider level.*

*Question: That would mean individual...*

*Answer: Yes sir.*

### CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. The Petition alleged and the evidence established that the respondent deprived the petitioner of property by unlawfully and arbitrarily and capriciously reducing its Medicaid reimbursements in 1998 in violation of N. C. Gen. Stat. 108A-55 and 150B-18.
2. The methodology for establishing "Y-Code" reimbursement rates is set out in Attachment 4.19-B, Section 13, of the N.C. Medical Assistance Plan.
3. Attachment 4.19-B, Section 13 requires respondents to pay rates equal to the actual unit cost as determined in the cost analysis for the most recent year available, with the cost determinations being based on the weighted average of unit cost for qualified providers participating in the North Carolina Pioneer Project. The only logical, meaningful interpretation of "actual unit cost" would be a determination based on the cost of the units in each Area Mental Health Center. If statewide averages are used, the intolerable situation arises as described in the testimony of the Director of the Division of Medical Assistance, Mr. Gambill, wherein half the Mental Health Centers receive more than they need and half receive less than what they need to service "Y-Code" clients.
4. The methodology set out in 4.19-B, Section 13, can only be changed in accordance with the N.C. Administrative Procedure Act, N.C. Gen. Stat. § 150B-1, *et seq.*, as required by N.C. Gen. Stat. § 108A-55(c) and 150B-18. "A rule is not valid unless it is adopted in substantial compliance with this Article." The 1998 change was not duly adopted. Therefore, it is void and the previous law remains in effect. See also the recent North Carolina Court of Appeals Decision, Arrowood vs. North Carolina Department of Health and Human Services, filed September 19, 2000 and Dillingham vs. North Carolina Department of Health and Human Services, 132 NC App 704 (1999).
5. Respondent did not act in accordance with the N.C. Administrative Procedure Act, N.C. Gen. Stat. § 150B-1, *et seq.*, to amend 4.19-B, Section 13, so as to allow it to use imputed units of service to calculate "Y-Code" rates or to otherwise deviate from prior requirements.
6. By using imputed units of service to calculate "Y-Code" rates for high risk intervention and outpatient services for the period in question, respondent acted unlawfully and arbitrarily and capricious.
7. As a direct result of respondent's unlawful and arbitrary and capricious change in "Y-Code" rates and the use of statewide averages rather than actual unit costs, the petitioner has been damaged in the amount of one and one-half million dollars.

**ONTESTED CASE DECISIONS**

---

**RECOMMENDED DECISION**

Petitioner is entitled to receive one and one-half million dollars from the respondent as reimbursement for deficient payments made to the petitioner from the date the respondent implemented its unlawful 1998 change through the date of this trial together with such additional losses as may occur after entry of this Recommend Decision.

All future calculations for Medicaid reimbursement rates for "Y-Code" reimbursement services should be based on the actual unit cost and weighted averages experienced by the petitioner.

**NOTICE**

The respondent is the agency making the Final Decision in this contested case. It is required to give each party an opportunity to file exceptions to this Recommended Decision and to present written arguments to those in the agency who will make the final decision. The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final Decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 15<sup>th</sup> day of December, 2000

-----  
Robert Roosevelt Reilly, Jr.  
Temporary Administrative Law Judge