

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Medical Care Commission

RULE CITATION: 10A NCAC 13F .0904

DEADLINE FOR RECEIPT: Monday, December 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

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

The two statutes you cite for authority provide for authority to “adopt rules necessary to carry out this Article” (G.S. 131D-2.16) and “to adopt such rules and regulations as may be necessary to carry out the intent and purposes of Article 13 of Chapter 131” (G.S. 143B-165). What are the substantive statutory provisions are these rules necessary to implement? These also need to be added to the authority section of the history note.

In subparagraph (a)(2) (p. 1 lines 12 and 13), “Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments” is not the title of 15A NCAC 18A .1300. Correct to make sure that the title and citation match, and both refer to the intended rule.

Subparagraph (a)(3) (p. 1 line 16) reads like a general regulation about meat processing, which would be outside of your authority. Consider “Only meat processed at a USDA-approved processing plant shall be served.”

On line 17, “at least” is unnecessary language.

In subparagraph (a)(4) (p.1 line 17), are “perishable” and “not-perishable” defined somewhere?

Subparagraph (b)(1) sets an ambiguous standard. What determines “sufficient”, “safe”, and “sanitary”?

On line 23, “at least” is unnecessary language.

In subparagraph (b)(3) (p.1 line 26), what determines if a food is a “hot food” or a “cold food”?

In subparagraph (c)(2) (p. 1 lines 32 and 33), “identified as to the current menu day and cycle for any given day” is not a clear direction.

On line 34, what is meant by “equal nutritional value”? Is this term defined somewhere?

Lawrence R. Duke
Commission Counsel
Date submitted to agency: December 7, 2022

In subparagraph (c)(3) (p.1 line 35), as written the “substitutions” are being “documented and maintained in the kitchen”. Do you mean “documented in records maintained in the kitchen”?

What does subparagraph (c)(4) require from the regulated entities? As written, it is unclear what actions are required.

In subparagraph (c)(5) (p. 2 line 1), is “invoices or other receipts of purchases” meant to refer to all purchases? Just food purchases?

Subparagraph (c)(7) (p.2 line 7) is unclear. Are “physician-ordered therapeutic diets” a generally defined category? Or do you mean “The facility shall have a matching therapeutic diet menu for any resident’s physician-ordered therapeutic diet for guidance of food service and staff”?

*In subparagraph (d)(1) (p. 2 line 10), add a comma between “adequate” and “based”.
In subparagraph (d)(2) (p.2 line 15), “resident” and “diet” need to be consistent in number. Either “in accordance with residents’ prescribed diets” or “in accordance with each resident’s prescribed diet”.*

“Palatable” (p. 2 line 11) is a vague and subjective term. Can you be more precise?

Subparagraph (d)(3) incorporates federal guidelines while parts (A) through (H) provide specific directions, some of which match federal guidelines. To the extent parts (A) through (H) repeat federal guidelines, those sections are unnecessary. As phrased, the regulated public is directed to follow both the federal guidelines and the specific directions, which is impossible when the specific directions differ from federal guidelines.

In part (d)(3)(A) (p. 2 line 23), the list of “dairy and dairy alternatives” reads as exhaustive, while the lists in comparable parts are identified as examples (e.g., “example” on p 2 line 30 or “such as” p. 3 line 5). Is this intentional?

In part (d)(3)(B) (p. 2 line 32), rewrite to “One of the servings shall be a citrus fruit. . .”

In part (d)(3)(C) (p. 3 lines 2 and 3), is “deep yellow vegetable” defined somewhere?

Also, for parts (d)(3)(B), (C), and (D), please see 26 NCAC 02C .0108(9), which governs the use of numbers within the text of rules. Spell out numbers one through nine. Also, write out fractions if the denominator is less than nine.

In subparagraph (e)(1) (p. 3 line 31), what is a delegated provider? Who is delegating what?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: December 7, 2022

1 10A NCAC 13F .0904 is readopted as published in 36:24 NCR 1933-1937 as follows:

2
3 **10A NCAC 13F .0904 NUTRITION AND FOOD SERVICE**

4 (a) Food Procurement and Safety in Adult Care Homes:

- 5 (1) ~~The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.~~
6 Facilities with a licensed capacity of 7 to 12 residents shall ensure food services comply with Rules
7 Governing the Sanitation of Residential Care Facilities set forth in 15A NCAC 18A .1600 which
8 are hereby incorporated by reference, including subsequent amendments, assuring storage,
9 preparation, and serving food and beverage under sanitary conditions.
- 10 (2) ~~All food and beverage being procured, stored, prepared or served by the facility shall be protected~~
11 ~~from contamination.~~ Facilities with a licensed capacity of 13 or more residents shall ensure food
12 services comply with Rules Governing the Sanitation of Restaurants and Other Foodhandling
13 Establishments set forth in 15A NCAC 18A .1300 which are hereby incorporated by reference,
14 including subsequent amendments, assuring storage, preparation, and serving of food and beverage
15 under sanitary conditions.
- 16 (3) All meat processing shall occur at a USDA-approved processing plant.
- 17 (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable
18 food in the facility based on the ~~menus,~~ menus established in Paragraph (c) of this Rule for both
19 regular and therapeutic diets.

20 (b) Food Preparation and Service in Adult Care Homes:

- 21 (1) Sufficient staff, ~~space~~ space, and equipment shall be provided for safe and sanitary food storage,
22 ~~preparation~~ preparation, and service.
- 23 (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife,
24 fork, spoon, ~~plate~~ plate, and beverage containers. ~~Exceptions may be made on an individual basis~~
25 ~~and shall be based on documented needs or preferences of the resident.~~
- 26 (3) Hot foods shall be served hot and cold foods shall be served cold.
- 27 (4) If residents require feeding assistance, food shall be maintained at serving temperature until
28 assistance is provided.

29 (c) Menus in Adult Care Homes:

- 30 (1) Menus shall be prepared at least one week in advance with serving quantities specified and in
31 accordance with the ~~Daily Food Requirements~~ daily food requirements in Paragraph (d) of this Rule.
- 32 (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for
33 any given day for guidance of food service staff.
- 34 (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic
35 ~~diets~~ diets, and documented and maintained in the kitchen to indicate the foods actually served to
36 residents.
- 37 (4) Menus shall be planned to take into account the food preferences ~~and customs~~ of the residents.

- 1 (5) Menus as served and invoices or other receipts of purchases shall be maintained in the facility for
2 30 days.
- 3 (6) Menus for all therapeutic diets shall be planned or reviewed by a ~~registered dietitian~~, licensed
4 dietitian/nutritionist. The facility shall maintain verification of the ~~registered dietitian's~~ licensed
5 dietitian/nutritionist's approval of the therapeutic ~~diets which shall include an original signature by~~
6 ~~the registered dietitian and the registration number of the dietitian~~, diets.
- 7 (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets
8 for guidance of food service staff.

9 (d) Food Requirements in Adult Care Homes:

- 10 (1) Each resident shall be served a minimum of three nutritionally ~~adequate~~, adequate based on the
11 requirements in Subparagraph (d)(3) of this Rule, palatable meals to the residents. Meals shall be
12 served a day at regular ~~hours~~ times comparable to normal meal times in the community. There shall
13 be with at least 10 hours between the breakfast and evening meals.
- 14 (2) Foods and beverages ~~that are appropriate to residents' diets~~ shall be offered in accordance with
15 residents' prescribed diet or made available to all residents as snacks between each meal for a total
16 of three snacks per day and shown on the menu as snacks.
- 17 (3) Daily menus for regular diets shall be based on the U.S. Department of Agriculture Dietary
18 guidelines for Americans 2020-2025, which are hereby incorporated by reference including
19 subsequent amendments and editions. These guidelines can be found at
20 [https://dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-](https://dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf)
21 2025.pdf for no cost and include the following:
- 22 (A) ~~Homogenized whole milk, low fat milk, skim milk or buttermilk~~; Dairy and dairy
23 alternatives: milk, yogurt, cheese, low-lactose or lactose-free dairy products, fortified soy
24 beverages, and soy yogurt. One cup (8 ounces) of ~~pasteurized milk dairy or dairy~~
25 alternatives at least ~~twice~~ three times a day. Milk served shall be pasteurized.
26 Reconstituted dry milk or diluted evaporated milk may be used in cooking ~~only and not for~~
27 ~~drinking purposes due to risk of bacterial contamination during mixing and the lower~~
28 ~~nutritional value of the product if too much water is used~~, only.
- 29 (B) Fruit: Two servings of ~~fruit (one serving equals 6 ounces of juice; ½ cup of raw, canned~~
30 ~~or cooked fruit; 1 medium size whole fruit; or ¼ cup dried fruit)~~, fruit; examples of one
31 serving are as follows: 6 ounces of juice; ½ cup of raw, canned or cooked fruit; 1 medium-
32 size whole fruit; or ¼ cup dried fruit. One serving shall be a citrus fruit or a single strength
33 juice in which there is 100% of the recommended dietary allowance of vitamin C in each
34 six ounces of juice. The second fruit serving shall be of another variety of fresh, ~~dried~~
35 dried, or canned fruit.
- 36 (C) Vegetables: Three servings of ~~vegetables (one serving equals ½ cup of cooked or canned~~
37 ~~vegetable; 6 ounces of vegetable juice; or 1 cup of raw vegetable)~~, vegetables; examples

1 of one serving are as follows: ½ cup of cooked or canned vegetable; 6 ounces of vegetable
 2 juice; or 1 cup of raw vegetable. One of these shall be a dark green, ~~leafy~~ leafy, or deep
 3 yellow vegetables three times a week.

4 (D) Eggs: One whole egg or substitute (~~e.g., 2 egg whites or ¼ cup of pasteurized egg product~~)
 5 such as 2 egg whites or ¼ cup of pasteurized egg product at least three times a week at
 6 breakfast.

7 (E) Protein: Two to three ounces of pure cooked meat at least two times a day for a minimum
 8 of 4 ounces. A substitute (~~e.g.,~~ (such as 4 tablespoons of peanut butter, 1 cup of cooked
 9 dried peas or ~~beans~~ beans, or 2 ounces of pure cheese) may be served three times a week
 10 but not more than once a day, unless requested by the resident.

11 Note: For the purposes of this Rule, Bacon is considered to be fat and not meat for the
 12 purposes of this Rule. does not meet the protein requirement for meat.

13 (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or
 14 grain products a day. Examples of one serving are as follows: 1 slice of bread; ½ of a
 15 bagel, ~~English muffin~~ English muffin, or hamburger bun; one 1 ½ -ounce muffin, 1- ounce
 16 roll, 2-ounce biscuit or 2-ounce piece of cornbread; ½ cup cooked rice or cereal (~~e.g.,~~ (such
 17 as oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, ~~pancake~~ pancake, or tortilla
 18 that is six inches in diameter. Cereals and breads offered as snacks may be included in
 19 meeting this requirement.

20 (G) Fats: Include butter, oil, ~~margarine~~ margarine, or items consisting primarily of one of ~~these~~
 21 (~~e.g., such as icing or gravy~~) these, such as icing or gravy.

22 (H) Water and Other Beverages: Water shall be served to each resident at each meal, in
 23 addition to other beverages.

24 (e) Therapeutic Diets in Adult Care Homes:

25 (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's
 26 physician. Where applicable, the therapeutic diet order shall be specific to caloric, ~~gram~~ gram, or
 27 consistency, such as for ~~calorie-controlled~~ calorie-controlled ADA diets, low sodium ~~diets~~ diets, or
 28 thickened liquids, unless there are written orders ~~which that~~ that include the definition of any therapeutic
 29 diet identified in the facility's therapeutic menu approved by a ~~registered dietitian.~~ licensed
 30 dietitian/nutritionist. For the purpose of this Rule "therapeutic diet" is a diet ordered by a physician
 31 or other delegated provider that is part of the treatment for a disease or clinical condition, to
 32 eliminate, decrease, or increase certain substances in the diet (e.g., sodium or potassium), or to
 33 provide mechanically altered food when indicated.

34 (2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be
 35 ~~brand-specific,~~ brand-specific, unless the facility has defined a house supplement in its
 36 communication to the physician, and shall specify quantity and frequency.

1 (3) The facility shall maintain ~~an accurate and~~ a current listing of residents with physician-ordered
2 therapeutic diets for guidance of food service staff.

3 (4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as
4 ordered by the resident's physician.

5 (f) Individual Feeding Assistance in Adult Care Homes:

6 (1) ~~Sufficient~~ The facility shall provide staff shall be available for individual feeding assistance as
7 ~~needed.~~ in accordance to residents' needs.

8 (2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall
9 be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

10 (g) Variations from the required three meals or time intervals between meals to meet individualized needs or
11 preferences of residents shall be documented in the resident's record.

12

13 *History Note: Authority G.S. 131D-2.16; 143B-165;*

14 *Eff. January 1, 1977;*

15 *Readopted Eff. October 31, 1977;*

16 *Amended Eff. April 1, 1984;*

17 *Temporary Amendment Eff. July 1, 2003;*

18 *Amended Eff. June 1, ~~2004.~~ 2004.*

19 *Readopted Eff. January 1, 2023.*

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In subparagraph (a)(1) (p. 1 lines 6 through 10), it looks like you are referring to 15A NCAC 18A .1600. If so, this should include a citation to the code in the same manner as the previous rule.

Subparagraph (a)(2) (p. 1 line 13) reads like a general regulation about meat processing, which would be outside of your authority. Consider “Only meat processed at a USDA-approved processing plant shall be served.”

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