

**RULES REVIEW COMMISSION MEETING
MINUTES
November 15, 2018**

The Rules Review Commission met on Thursday, November 15, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

Commissioner Poley was not present during the discussion or vote on any matters coming before the Commission, except for the follow-up matter for DHHS/ Division of Medical Assistance.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the October 18, 2018 meeting and the October 29, 2018 special meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Commission of Navigation and Pilotage for the Cape Fear River and Bar

04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128 – All rules were unanimously approved.

Board of Elections and Ethics Enforcement

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107. No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she has a matter pending before the Board.

DHHS/Division of Medical Assistance

10A NCAC 22F .0301 was approved with Commissioners Doran and Hyde voting against. Pursuant to G.S. 150B-21.12(c), the Commission found that the submission was responsive to the Commission's objection; however, the Commission also found that the changes were substantial requiring the revised rule to be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

10A NCAC 22J .0106 was unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 10A NCAC 22J .0106.

Prior to the review of the rules from DHHS/Division of Medical Assistance, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because his law firm represents a party.

Matt Wolfe, a Partner with Parker Poe Adams & Bernstein, addressed the Commission.

Jeff Horton, the Executive Director of the North Carolina Senior Living Association, addressed the Commission.

Kathy McGraw, with the Attorney General's Office representing the agency, addressed the Commission.

Matthew Cochran, with the Law Firm of Ott Cone & Redpath, addressed the Commission.

Ronnie Cook, with the North Carolina Healthcare Association, addressed the Commission.

Richard Rutherford, Senior Manager with SebraCare, Inc., addressed the Commission.

Steve Keene, General Counsel with the Medical Society, addressed the Commission.

Ryan Eppenberger, the rulemaking coordinator with DHHS/Division of Health Benefits, addressed the Commission.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0203, .0301; 09G .0102, .0504, .0505, and .0701 were unanimously approved.

12 NCAC 09B .0101 and 09G .0304 were withdrawn at the request of the agency.

The agency is addressing the objection to 12 NCAC 09G .0103. No action was required by the Commission.

Department of Public Safety

14B NCAC 07A .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0118, and .0119 – The agency is addressing the technical change requests from the October meeting. No action was required by the Commission.

The agency is addressing the objections for 14B NCAC 01C .0401 and .0402. No action was required by the Commission.

Water Pollution Control System Operator Certification Commission

15A NCAC 08F .0406 and 08G .0802 – All rules were unanimously approved.

Commission for Public Health

15A NCAC 18E .0601, .0602, .0701, .0702, .0703, .0901, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0911, .1001, .1002, .1101, .1102, .1103, .1104, .1105, .1106, .1201, .1202, .1203, .1204, .1205, .1206, .1302, .1303, .1304, .1305, .1306, .1307, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1709, .1710, .1711, .1712, and .1713 – The rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 15A NCAC 18E .1002, .1101, .1102, .1104, .1105, .1106, .1202, .1203, .1204, .1205, .1206, .1303, .1304, .1305, .1306, .1307, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1709, .1710, .1711, .1712, and .1713.

Board of Registration for Foresters

21 NCAC 20 .0103 and .0104 – All rules were unanimously approved.

LOG OF FILINGS (PERMANENT RULES)*Pre-Reviewed Rules***DHHS - Division of Health Service Regulation**

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02K

15A NCAC 02K .0212 was unanimously approved.

Environmental Management Commission 15A NCAC 13B

All rules were unanimously approved.

Water Treatment Facility Operators Certification Board

15A NCAC 18D .0206 was unanimously approved.

Medical Board

21 NCAC 32Y .0101 was unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rule because of a conflict.

*Non Pre-Reviewed Rules***Department of Insurance**

All rules were unanimously approved.

Industrial Commission

All rules were unanimously approved.

Sheriffs Education and Training Standards Commission

All rules were unanimously approved.

Alcoholic Beverage Control Commission

All rules were unanimously approved.

Board of Nursing

The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Board of Nursing to extend the period in order to allow the agency to make technical changes and submit the rewritten rules at a later meeting.

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board, including questions on rulemaking from time to time.

Building Code Council

All rules were unanimously approved.

EXISTING RULES REVIEW**DHHS/Division of Health Service Regulation**

10A NCAC 14C – The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 05 - The Commission unanimously approved the report as submitted by the agency.

11 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

Commission for Public Health

15A NCAC 18A - The Commission did not address the report based upon the October 29th meeting.

Private Protective Services Board

14B NCAC 16 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Environmental Management Commission

15A NCAC 02L - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2022 pursuant to G.S. 150B-21.3A(d)(2).

Department of Environmental Quality

15A NCAC 07O - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Auctioneer Licensing Board

21 NCAC 04 - The agency requested an extension of the schedule for readoption until February 29, 2020 for rules subject to readoption in 21 NCAC 04.

The extension request was approved, with Commissioner Doran voting against.

The Commission rescheduled the date of readoption for the rules subject to readoption in 21 NCAC 04. The agency will readopt the rules no later than February 29, 2020 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 10:19 a.m. The meeting resumed at 10:27 a.m.

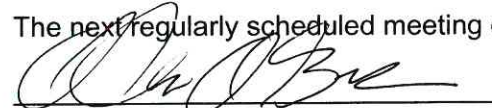
COMMISSION BUSINESS

At 11:52 a.m., upon a motion and second, and unanimous vote, the Commission ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the Department of Health and Human Services against the Rules Review Commission.

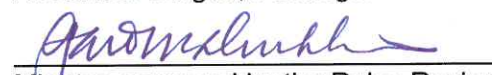
The Commission came out of closed session and reconvened at 1:25 p.m.

The meeting adjourned at 1:25 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 13th at 9:00 a.m.



Alexander Burgos, Paralegal



Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

November 15, 2018

Rules Review Commission

Meeting

Please Print Legibly

Name	Agency
Phillip Reynolds	NC DOJ
Jennifer Everett	DEQ
Kathy McGraw	NC DOJ
Ryan Eppenberger	NC DHB (Medicaid)
Richard Rutherford	Sembra Care, Inc.
Matthew Jordan Cochran	Off Cone & Redpath, PA.
Marie Enitt	NC DOJ
BRENDA EADDY	NC DOJ
Matt Wolfe	Parker Poe
Doug Lassiter	NC STA
Nancy Deal	DHHS DPH
Nadine Pfeiffer	DHHS DHSS
STEVE REID	NC DWR
Jeff Huxar	NC Senior Living Assoc.
Charmaine Williams	CJETS
Loretta Bunch	NC DOJ
Charlie Diehl	NC ALB
BARRY GUPTON	NC DOI/NCBCC
Harry Michael	NC DHHS
Virginia Nicklaus	NC DHHS
Andy SL	NCR

November 15, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Tricia Angeli	DPH/OSHP
Angela Ellis	NC BON
Amy Fitzhugh	NC BON
Ronnie Cole	NCHA
Thomas Campbell	DOJ
Jessica Montie	DEQ/DWM
Whitney Belich	NCDQ
Ashtley Snyder	Industrial Comm.
Jon Risgaard	NC-DWR
John P. Barkley	DOJ-B-CPH/DTHS
Jay Frick	DWR
Steve Kane	NCMS
Margaret McDodd	DPS
JOHN THOMPSON	DHB-MEDICARE
WALKER REAGAN	ABC Commission
Christy Goebel	DEQ
OC Phillips	DHB
Jeff H. H. H.	PPSRB ? Assoc Assoc.



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November 15, 2018

Jeff Gray
Private Protective Services Board
Baily & Dixon, LLP
PO Box 1351
Raleigh, North Carolina 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **14B NCAC 16**

Dear Mr. Gray:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
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fax: 919/431-3100

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fax: 919/431-3104

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Assistants
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 16, 2018
APO Review: October 21, 2018
Private Protective Services Board
Total: 95**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>14B NCAC 16 .0101</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0102</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0103</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0104</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0105</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0106</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0107</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0108</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0109</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0110</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0111</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0112</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0113</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0114</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0201</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0202</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0203</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0204</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0205</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0301</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0302</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0401</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0402</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0403</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0404</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0405</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0501</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0502</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0503</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0504</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0601</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0602</u>	Necessary with substantive public interest
<u>14B NCAC 16 .0603</u>	Necessary with substantive public interest

[illegible]

<u>14B NCAC 16 .1206</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1207</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1301</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1302</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1303</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1304</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1305</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1306</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1307</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1308</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1401</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1402</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1403</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1404</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1405</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1406</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1407</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1408</u>	Necessary with substantive public interest



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Street address:
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November 15, 2018

Jennifer Everett
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02L**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2022.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,



Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
February 15, 2018
APO Review: March 06, 2018
Environmental Management Commission
Total: 43**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 02L .0101</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0102</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0103</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0104</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0106</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0107</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0108</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0109</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0110</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0111</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0112</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0113</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0114</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0401</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0402</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0403</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0404</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0405</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0406</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0407</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0408</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0409</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0410</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0411</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0412</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0413</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0414</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0415</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0501</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0502</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0503</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0504</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0505</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0506</u>	Necessary with substantive public interest

<u>15A</u>	<u>NCAC 02L</u>	<u>.0507</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0508</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0509</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0510</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0511</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0512</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0513</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0514</u>	Necessary with substantive public interest
<u>15A</u>	<u>NCAC 02L</u>	<u>.0515</u>	Necessary with substantive public interest



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November 15, 2018

Jennifer Everett
Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 070**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
June 15, 2017
APO Review: August 19, 2017
Environmental Quality, Department of
Total: 5**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 07O .0101</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0103</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0104</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0201</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0202</u>	Necessary with substantive public interest

