

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0303

DEADLINE FOR RECEIPT: Friday September 25th at 9:00am

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:

(b)(2) How will programs know what standards were in place at the time of change? Does the agency have all previous Rules available?

Response: Yes. The Construction Section can provide the previous Overnight Respite physical plant rules.

Response: But you cannot provide an enforceable version of the previous NCAC. There is a serious underlying problem with this subparagraph that is causing confusion with the other rules where you added language that a "subparagraph applies to new and existing."

The language in this subparagraph is not possible and needs to be deleted. This is saying that existing facilities shall meet the Rules in .0300 in existence at the time of their change. However, citizens cannot be held to previous iterations of the NCAC the way they are for the building code. A NCAC code rule is in effect when it is adopted/amended and when it's repealed or changed the previous version no longer has any enforceability.

Generally, the rules in the code are enforceable on ALL facilities both existing and those that are created while the rule is in the code. You can exempt things rule by rule stating specifically that facilities created before a certain date have to do xyz while facilities created after a date do abc. You can also say that facilities have to meet the building code in existence at the time of change. But you cannot make an obsolete version of the NCAC enforceable. If the building code changes and is no longer consistent with the rule, then you would have to amend the rule.

I recognize this may create a problem for multiple rules. I am more than willing to talk about the issue if it would be a help.

(e) Page 2, Line 7 again will all previous building codes be available with clear indications of what was required on what date?

Response: Previous building codes are available in DHRS Construction Section's office as well as on the Office of State Fire Marshall, NC

Department of Insurance's website at <https://www.ncosfm.gov/codes/codes-current-and-past>.

Response: Recommend noting this in the rule. You incorporate the current codes but make no mention of how those who need to would access previous applicable codes.

(e)Line 11, In sections (c) and (d) you are referring to the program requesting licensure as the "applicant." Here in (e) you change it to "administrator." If these are referring to the same program or position then be consistent in how you refer to them. Choose one.

(g) Line 13, Is there an authority allowing the agency to waive or modify its rule? If so please reference. Generally, 150B-19(6) prohibits an agency from creating a rule that "allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify a requirement." There are no such guidelines here.

Response: It is assumed the question is concerning granting equivalencies. The existing language was not touched here. However, the language has been modified to be in line with the most recently accepted readopted language used for equivalencies, which we believe is in line with 150B-19(6).

Response: Yes, in the Rule you state that an equivalency is a variation to a requirement contained in the rules of this Section. That would be a modification of the Rule so it has to meet 150B-19(6). When a rule is before the Commission for amendment, they are reviewing the entire rule not just what you "touched" this time. The entire rule must meet the requirements of 150B-21.9.

The language added in (h) aides in meeting the requirement in 150B-19(6).

However, within your edits to (g) you are now referring to "Division." What is "Division"? Are you referring to the Division of Health Service Regulation Construction Section as in .0310? If so, you refer to it in that rule as DHSR Construction Section or just Construction Section. If this is the same thing please be consistent in terminology. You now refer to The Division granting the equivalency but the equivalency as a Construction Section-approved alternate method. Are these the same? Please edit it to clarify.

(q) Page 3, Line 23, Please use a direct link to the rule.

Response: Updated in text.

Response: The new link does not function

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.