

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0305, .0306, .0312, .0316, .0317, .0318, .0601

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:

Authority: S.L. 2026-1 states: "The Medical Care Commission may adopt emergency and temporary rules as necessary to implement the requirements and limitations of G.S. 131D-6.1(c), as amended by subsection (a) of this section." This clearly gives the Commission some discretionary authority to make temporary rules as needed to implement the changes in (c)(2) and (c)(8). It is also clear that the changes made in subsection (a) may impact additional rules because of issues such as the application of additional building codes due to the increased number of participants within the program. However, it is not clear why the changes in 10A NCAC 13E .0305, .0306, .0312, .0316, .0317, .0318, and .0601 are necessary based on (c)(2) and (c)(8) and warrant modification to notice and hearing requirements under G.S. 150B-21.2. Please provide clarification as to the necessity for each rule noted above.

Response: Amendments to rules 10A NCAC 13E .0303, .0305, .0306, .0312, .0316, .0317, and .0318, that govern the physical plant requirements of overnight respite services in adult day programs are required to ensure the health and safety of program participants. When the number of allowable program participants in an overnight services facility increases to more than six, different requirements from the North Carolina State Building Code apply. Currently, the rules govern overnight respite programs for up to six residents, and do not include the references to the Building Code requirements for overnight facilities housing seven or more participants. When increasing capacity in an overnight facility, various physical plant requirements need to be updated to ensure there is adequate space for all of the participants to receive care and services and that the facility is safely constructed. Also, amendments made to 10A NCAC13E .0601 update the tuberculosis testing requirements to meet current communicable disease requirements as set forth by the Commission for Public Health to keep staff and participants safe until temporary and permanent rulemaking can occur. Prevention of communicable disease is especially important since the number of allowable participants will be increasing to twelve and participants in these programs come from the community setting.

Meghan Barney
Commission Counsel

Date submitted to agency: September 14, 2026

I understand that the General Assembly passed S.L. 2026-1 and included Section 3E. 1.(b) which states "The Medical Care Commission may adopt emergency and temporary rules as necessary to implement the requirements and limitations of G.S. 131D-6.1(c), ***as amended by subsection (a) of this section.***" I read the addition of the highlighted language to mean that any temporary rules must be directly related to implementation of the amended subsections.

The Medical Care Commission clearly has broad rule making authority for their permanent rules under G.S. 131D-6.1(c)(1)-(11). However, the temporary ruling making authority, based on the amendment in the session law is narrower and directly related to (2) Staffing and (8) Bed Capacity. For some of the temporary rules submitted, the direct necessity based on the capacity and staffing increases are clear or the impact of the building code changes are clear. However, for other rules it is not. That doesn't mean it doesn't exist, just that as a non-expert I do not see it.

I specified rules .0305, .0306, .0312, .0316, .0317, .0318, and .0601 because the need for changes under temporary rules was not clear. For instance, in Rule .0305, why is it necessary to amend to require insect-proof screens and window opening distance? Is a different building code, which is newly applicable based on the increased number of participants, requiring those changes? If so, please point me to the new requirement that now applies based on the changes in the session law. If this change is not required by new building code requirements due to the increase in participants, then I do not believe there is authority to circumvent the traditional notice and hearing requirement for the amendment. The Medical Care Commission may have clear authority to amend this section of their permanent rule under (c)(3) building specifications, but the need for temporary rules may not be met.

I had similar concerns about the tuberculosis testing. Rules .0403 and .0601 both contain amended language concerning tuberculosis testing and incorporate 10A NCAC 41A .0205. You state that this update is required "to meet current communicable disease requirements." Are those requirements changing based on the number of participants? Or is the same testing required no matter how many participants or staff are present? 10A NCAC 41A .0205 has not been amended since 2012 so that is not a new and pressing change impacted by the session law. Is there a medical or health code that is impacted by the amendment changing capacity? I completely understand that tuberculosis testing is important in any facility where participants are in close proximity. However, 10A NCAC 41A .0205 could have been incorporated in its current version any time in the last fourteen years via a permanent rule making amendment. What about the session law amendment makes it a new and necessary requirement?

Please look at rules .0305, .0306, .0312, .0316, .0317, .0318, and .0601 and let us know how the edits to each rule are specifically required by the amendments passed in S.L. 2026-1.

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

Meghan Barney
Commission Counsel

Date submitted to agency: September 14, 2026

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

AGENCY: Medical Care Commission

RULE CITATION: ALL RULES IN THE SET

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

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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:

Please review the editing for all of the rules. I will point out the issues in the first rule, but all of the edits need to be reviewed to ensure they comply with the requirements for temporary amendments with changes from publication.

- **Temporary Amendment with changes from publication.** Changes shall be identified as follows:
 - text that is being added shall be underlined and highlighted. Example
 - existing text that is being deleted shall be struck through and highlighted. Example
 - existing text that was proposed to be deleted but is now being restored shall be highlighted. Example
 - text that was proposed to be added but is now being deleted shall be enclosed in brackets, struck through, and highlighted. Example

These formatting examples are posted on our website on the page for rule making coordinators, <https://www.oah.nc.gov/rule-format-examples#RuleFormatExamplesforPublicationintheNCAdministrativeCode-6054>

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0302

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

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

(a) Line 5 change "twelve (12)" to "12" See 26 NCAC 02C .0108(9): numbers one to nine are spelled out, figures are used for numbers over nine, or if a sentence contains both a number one to nine and a number over nine use figures for both. This is also reflected in the Style Guide at 5.1.

Response: Updated in text.

**Response: (a) line 5 remove the parentheses. It should read ~~six [twelve (12)]~~
12**

(b) Line 9 delete "permitted" for clarity as it is unnecessary.

Response: Updated in text.

Response: (b) line 9 edit should be bracketed based on the editing guidelines ~~[permitted]~~

(d) Line 27 Please remove hyperlink

Response: This hyperlink is provided in numerous other licensing rules. This hyperlink is used to help providers access the North Carolina State Building Code.

Response: You do not need to remove the web address, I understand its purpose. You need to remove the active hyperlink that is embedded because active hyperlinks are not read correctly in the publishing software.

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

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

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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: Then I would recommend stating that so those looking to comply are aware.

(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 DHSR 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

Meghan Barney
Commission Counsel

Date submitted to agency: September 14, 2026

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.

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0305

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

No further concerns noted with Rule text.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0306

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

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

(a) *Line 5 Are there any restrictions as to the time or activities that the dining area may be used for? What qualifies as "during the day"?*

Response: There are no known restrictions, times, or activities that the dining area cannot be used for. "During the day" would mean anytime the dining area is not being used for eating meals.

Response: Then I would specify that it may be used for other activities when it is not being used for eating meals.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0308

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

No further concerns noted with Rule text.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0309

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

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

Line 15-16, You specify that this paragraph will apply to new and existing facilities. How is this different than any of the other paragraphs?

Response: Physical plant requirements of Section .0300 are generally “fixed” in time based on when a facility is licensed, constructed, altered, etc. Thus the language in .0303(b), (c), (d) and (e). However, since this specific paragraph is about the rights for privacy for participants in bathrooms with multiple devices, this paragraph would be applied to both new and existing facilities to ensure privacy is maintained in this area.

Response: The language in .0303(b), (c), (d) and (e) state that the building code will apply based on the time of licensure. It does not fix the time for Section .0300 of the NCAC. The rule is in effect from the time it is adopted/amended and it applies to any program that is in existence from the time that it is put in place until it is amended/repealed unless otherwise explicitly stated within the rule. So all paragraphs and subparagraphs of this rule apply to new and existing facilities. If certain facilities are going to be exempt from a part of a rule it has to be explicitly stated. For example, "facilities built prior to x/x/x do not have to comply with paragraph (c)." There is no "older version" of the NCAC that can be applied to programs that were licensed at an earlier time.

(h) Line 27 Replace "seven" with "7" in both locations and "twelve" with "12"

Response: Updated in text.

Response: (h) is all one sentence so the first "seven" now in line 28 also needs to be changed to "7"

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

Meghan Barney
Commission Counsel

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0312

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

(f) Line 33 If this a paragraph needs a statement that it applies to all new and existing facilities how is this different than the others? What do all the other paragraphs apply to?

Response: Physical plant requirements of Section .0300 are generally “fixed” in time based on when a facility is licensed, constructed, altered, etc. Thus the language in .0303(b), (c), (d) and (e). However, since this specific paragraph is about participants who are determined by a physician or licensed health profession or observed by staff to be disoriented or exhibiting wandering behavior to have sounding devices on doors to alert staff, this paragraph is applied to both new and existing facilities to ensure the safety of those participants since cognitive status can change over time.

Response: The language in .0303(b), (c), (d) and (e) state that the building code will apply based on the time of licensure. It does not fix the time for Section .0300 of the NCAC. The rule is in effect from the time it is adopted/amended and it applies to any program that is in existence from the time that it is put in place until it is amended/repealed unless otherwise explicitly stated within the rule. So all paragraphs and subparagraphs of this rule apply to new and existing facilities. If certain facilities are going to be exempt from a part of a rule it has to be explicitly stated. For example, "facilities built prior to x/x/x do not have to comply with paragraph (c)." There is no "older version" of the NCAC that can be applied to programs that were licensed at an earlier time.

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

Meghan Barney
Commission Counsel

Date submitted to agency: September 14, 2026

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0316

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

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

(d) Line 17-19 This is passive voice. Who shall rehearse? Are participants involved? Who will maintain the records and where? Please edit.

Response: The existing language was not touched here. However, the language has been modified to be in line with the most recently accepted readopted language.

Response: (c) Line 32 need to add "the" before "drill" at the end of the line.

(e) Line 20-22 This is passive voice. Who shall prepare it, update it and maintain it? What does "maintained" mean in this context. Someone is preparing and updating it yearly. Does maintained mean that a copy has to be available? Please edit.

Response: The existing language was not touched here. However, the language has been modified to be in line with the most recently accepted readopted language.

Response: 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. You did not modify any of the language in this subparagraph. It is still passive and unclear.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0317

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

(b) Line 7 "so as to avoid hazards" is very vague. Are there requirements to the installation of "built-in electric heaters" that could be referenced to provide clarity and specificity?

Response: Updated text to provide clarity.

Response: Suggest adding "according to manufacturers instructions" or some other language that gives clarity as to how they are supposed to avoid burn hazards.

(d) Line 17-18 You specify that this paragraph will apply to new and existing facilities. How is this different than any of the other paragraphs? This is the same issue noted in previous rules.

The language in .0303(b), (c), (d) and (e) state that the building code will apply based on the time of licensure. It does not fix the time for Section .0300 of the NCAC. The rule is in effect from the time it is adopted/amended and it applies to any program that is in existence from the time that it is put in place until it is amended/repealed unless otherwise explicitly stated within the rule. So all paragraphs and subparagraphs of this rule apply to new and existing facilities. If certain facilities are going to be exempt from a part of a rule it has to be explicitly stated. For example, "facilities built prior to x/x/x do not have to comply with paragraph (c)." There is no "older version" of the NCAC that can be applied to programs that were licensed at an earlier time.

(f) Line 20 "so as to avoid a burn hazard" is very vague. Are there requirements to the installation or creation of "fireplaces, fireplace inserts, and wood stoves" that could be referenced to provide clarity and specificity?

Response: Updated text to provide clarity.

Meghan Barney
Commission Counsel

Date submitted to agency: September 14, 2026

Response: Suggest adding "according to manufacturers instructions" or some other language that gives clarity as to how they are supposed to avoid burn hazards.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0318

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

(b) Line 9 entering or exiting what? Just the building? All parts of the property or premises? Based on (a) above a fence could be a barrier to an area of the premises that contains a pool, creek or ditch. Is that not allowed? Please edit.

Response: Updated in text.

Response: The interplay between (a) and (b) is still not clear. All ditches, creeks, ponds, and pools have to have a safety barrier. A fence is a type of safety barrier, arguably the most likely type of barrier to put around those hazards. However, a fence cannot stop participants from entering or exiting the premises. That safety fence would purposely be blocking participants from entering a portion of the premises, the portion that has a pool, pond or other hazard. Are there portions of the premises that participants do not have access to? Maybe specify that a fence may not prevent participants from exiting or entering the portions of the premise available for all participants to use.

(d) Was (c) purposely left out? If so, who does it apply to?

Response: Yes (c) was purposely left out. The requirements of (c) applies to outdoor stairways and ramps and the requirement for these specific areas to have adequate lighting.

Response: This is the same "new and existing" issue

The language in .0303(b), (c), (d) and (e) state that the building code will apply based on the time of licensure. It does not fix the time for Section .0300 of the NCAC. The rule is in effect from the time it is adopted/amended and it applies to any program that is in existence from the time that it is put in place until it is amended/repealed unless otherwise explicitly stated within the rule. So all paragraphs and subparagraphs of this rule apply to new and existing facilities. If certain facilities are going to be exempt from a part of a rule it has to be explicitly stated. For example, "facilities built prior to x/x/x

Meghan Barney
Commission Counsel

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do not have to comply with paragraph (c)." There is no "older version" of the NCAC that can be applied to programs that were licensed at an earlier time.

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0403

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

(a)(2) Lines 9-10 this incorporation is not correct. Please see G.S. 150B-21.6. It must specify where copies of the material may be accessed and the cost on the date the rule is adopted.

Response: Updated in text

Response: Links cannot just be to the homepage for readers to then have to search out the content. You need to link directly to the information being incorporated.

(a)(5) Line 16 Is there a reference for this? It is not clear what "the rights" are. Whose rights?

Response: Yes, updated reference in text.

Response: Add "participants" before rights for clarity

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

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

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13E .0601

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

(g) Line 28 change "The program" to "The administrator or their designee" for consistent clarity

(g) Line 34 you need a space between A and the period for .0205

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