

1 10A NCAC 13E .0302 is amended with changes under temporary procedures as follows:

3 **10A NCAC 13E .0302 CAPACITY**

4 (a) Pursuant to G.S. 131D-6.1(c)(8), the Division of Health Service Regulation shall not approve a capacity of greater
5 than ~~six~~ twelve (12) 12 participants for an overnight respite services program. For the purposes of this Rule,
6 "capacity" means the maximum number of participants that the overnight respite services program is licensed to house
7 at any given time.

8 (b) An overnight respite services program shall not exceed the capacity shown on its license. The license shall indicate
9 the overnight respite services program's capacity for ambulatory and non-ambulatory participants permitted that an
10 overnight respite services program facility can house at any given time. For the purposes of this Rule, "ambulatory"
11 means the participant is able to respond and evacuate from the facility without verbal or physical assistance from
12 others in the event of an emergency. "Non-ambulatory" means the participant is not able to respond and evacuate from
13 the facility without verbal or physical assistance from others in the event of an emergency.

14 (c) Prior to an increase in capacity by adding rooms, altering ~~rooms, or~~ rooms, remodeling, changing use of ~~space,~~
15 ~~space, or without building modifications,~~ the overnight respite services program shall submit a request for capacity
16 increase and two building plans of each floor to the Construction Section. One plan shall indicate the current use of
17 rooms in the existing building. The other plan shall indicate the proposed use of rooms in the existing building and its
18 addition, alteration, remodeling, or change in use of space. For an addition to an existing building, the building plans
19 shall also indicate how the addition will be tied into the existing building and any proposed changes to the building
20 structure.

21 (d) When ~~the an~~ the an overnight respite services program increases its capacity by the addition to or alteration of an existing
22 building, the entire overnight respite services program shall comply with the North Carolina ~~Fire Prevention Code,~~
23 ~~State Building Codes,~~ which is are incorporated herein by reference including subsequent amendments and editions.
24 Copies of ~~this code~~ these codes may be ~~purchased from the International Code Council online at~~
25 ~~<http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of eighty five dollars (\$85.00) or~~ accessed electronically
26 free of charge at ~~http://codes.iccsafe.org/app/book/toc/2012/North_Carolina/Fire/index.html.~~
27 <https://codes.iccsafe.org/codes/united-states/north-carolina>.

29 *History Note: Authority G.S. 131D-6.1;*

30 *Eff. April 1, ~~2017~~ 2017;*

31 *Emergency Amendment Eff. July 1, 2026.*

32 *Temporary ~~Adoption~~ Amendment Eff. October 7, 2026.*

1 10A NCAC 13E .0303 is amended with changes under temporary procedures as follows:

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3 **10A NCAC 13E .0303 DESIGN AND CONSTRUCTION**

4 (a) For the purposes of this Rule the following definitions apply:

- 5 (1) "facility" "Facility" means a building or portion of a building housing an overnight respite services
6 program as defined in G.S. 131D-6.1(a); 131D-6.1(a).
- 7 (2) "proposed facility" "Proposed facility" means the new construction of a building for a facility, an
8 addition or alteration to an existing building for a facility, or the change in use of a building for a
9 facility; facility.
- 10 (3) "existing facility" "Existing facility" means a currently licensed facility and a proposed facility that
11 will be built according to building plans approved by the Construction Section for compliance with
12 the standards established in this Section, built prior to the effective date of this Rule; and Rule.
- 13 (4) "new facility" "New Facility" means a facility that has not been licensed previously as an overnight
14 respite services program and for which an initial license is sought. The term also includes a proposed
15 facility that will be built according to building plans approved by the Construction Section for
16 compliance with the standards established in this Section, on or after the effective date of this Rule.

17 (b) The physical plant requirements for each facility shall be applied as follows:

- 18 (1) A new facility shall meet the standards established in this Section.
- 19 (2) An existing facility shall meet the standards established in this Section that were in existence at the
20 time of change in use of ~~space~~, space, increase in capacity, construction, addition, alteration, or
21 repair. Copies of existing physical plant standards may be obtained from the N. C. Department
22 of Health and Human Services, Division of Health Service Regulation, Construction Section, 1915
23 Health Services Way, Raleigh, NC 27607 at no cost.
- 24 (3) An existing building converted from another use that a program intends to use for an overnight
25 respite services program shall meet all the requirements of a new facility as indicated in
26 Subparagraph (1) of this Paragraph.

27 (c) All new construction, ~~additions,~~ additions, modifications, renovations, or alterations for a new facility requesting
28 licensure for less than seven participants shall meet the requirements of the North Carolina State Building Codes,
29 Code: Residential Code. [Code for overnight respite services programs requesting licensure for less than seven (7)
30 participants.] Additionally, overnight respite services programs requesting licensure for four to six participants shall
31 meet the North Carolina State Building Code: Building Code, Licensed Residential Care Facilities Section in effect at
32 the time of licensure. Before starting any construction or alterations, the [overnight respite services program] applicant
33 or his appointed representative administrator or their designee shall [consult with] contact the local building code
34 enforcement official for information about required permits and construction requirements.

35 (d) All new construction, additions, modifications, renovations, or alterations for a new facility requesting licensure
36 for [seven (7)] 7 to [twelve (12)] 12 participants shall meet the requirements of the North Carolina State Building
37 Code: Building Code, Licensed Large Residential Care Facilities Section in effect at the time of licensure. Before

starting any construction or alterations, the ~~[overnight respite services program] applicant or his appointed representative administrator or their designee~~ shall ~~[consult with]~~ contact the local building code enforcement official for information about required permits and construction requirements. The North Carolina State Building Codes, which are incorporated herein by ~~reference~~ reference, including subsequent amendments and ~~editions~~. Copies of these ~~codes~~ editions, may be purchased from the International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of five hundred twenty seven dollars (\$527.00) or accessed electronically free of charge at <http://codes.iccsafe.org/North%20Carolina.html>. <https://codes.iccsafe.org/codes/united-states/north-carolina>. All new construction, additions, or repairs of an existing facility shall meet the requirements of the North Carolina State Building Codes in effect at the time of construction, addition, alteration, or repair.

(e) All new construction, additions, modifications, renovations, or alterations of an existing facility shall meet the requirements of the North Carolina State Building Codes in effect at the time of construction, addition, modification, renovation, alteration, or repair. Before starting any construction or alterations, the ~~[overnight respite services program] applicant or his appointed representative administrator or their designee~~ shall ~~[consult with]~~ contact the local building code enforcement official for information about required permits and construction requirements. The existing North Carolina State Building Codes may be accessed electronically free of charge at <https://www.ncosfm.gov/codes/codes-current-and-past>.

~~(d)~~(f) A facility shall be constructed, equipped, and maintained to comply with the standards established in this Section for the capacity indicated on its license.

~~(e)~~(g) The Construction Section Division may grant an equivalency to allow ~~an~~ an alternate methods, procedures, design ~~or criteria, or~~ functional variation from the requirements of this Rule and the rules contained in this Section. For the purposes of this Rule, an "equivalency" is a Construction Section-approved alternate method, procedure, design ~~criteria, or and~~ functional variation to a requirement contained in the rules of this Section that meets the intent of the rule requirement but does not reduce the safety and operational effectiveness of the facility design and layout. If granted, the equivalency shall apply to a specific facility. ~~A program shall be granted an equivalency if: The equivalency may be granted by the Construction Section Division when the administrator, applicant, or their designee his appointed representative submits a written equivalency request to the Construction Section Division that states the following:~~

(1) ~~the overnight respite services program submits a written equivalency request to the Construction Section indicating:~~

(A) ~~the rule requirement that will not be met;~~

(B) ~~the justification for the equivalency; and~~

(C) ~~how the proposed equivalency meets the intent of the corresponding rule requirement; and~~

(2) ~~the program receives a written approval of the equivalency from the Construction Section.~~

(1) the rule citation and the rule requirement that will not be met because strict conformance with current requirements would be:

(A) impractical;

(B) unable to be met due to extraordinary circumstances. For the purpose of this Rule, "extraordinary circumstances" means situations that are unexpected and beyond the control of the facility; or

(C) unable to be met due to new programs.

(2) the justification for the equivalency; and

(3) how the proposed equivalency meets the intent of the corresponding rule requirement.

(h) In determining whether to grant an equivalency request, the Construction Section ~~[Division]~~ shall consider whether the request will reduce the safety and operational effectiveness of the facility. The administrator or their designee facility shall have maintain a copy of the approved equivalency issued by the Construction Section ~~[Division]~~.

~~(f)~~(i) If any of the rules, codes, or standards contained in this Section conflict, the most restrictive requirement shall apply.

~~(g)~~(j) For an existing facility whose license is revoked or suspended by the Division of Health Service Regulation pursuant to G.S. 131D-6.1(g)(2) for at least 60 days, the facility shall meet the requirements of a new facility as required by Subparagraph (b)(1) of this Rule prior to being relicensed.

~~(h)~~(k) Prior to commencement of construction or change in use of space, any program intending to offer overnight respite care services that is planning new construction, an ~~addition~~ addition, modification, renovation, or alteration to an existing building, or a change in use of space shall submit building plans and other documents to the Construction Section as specified in Rule .0301 of this Section.

~~(i)~~(l) If the building to be used for a facility is two or more stories in height, it shall meet the following additional requirements:

(1) construction shall not exceed the allowable area for occupancy in the North Carolina State Building Code; Code: Building Code;

(2) participants shall be housed on the level of the principal exterior door as defined in Rule .0312(c) of this Section; and

(3) participant-use areas shall be located on the level of the principal exterior door.

~~(j)~~(m) The basement and the attic shall not to be used for storage or sleeping.

~~(k)~~(n) The ceiling height throughout the facility shall be at least seven and one-half feet from the floor.

~~(l)~~(o) Elevation changes in the floor are not permitted in participant-use ~~areas~~; areas. Steps and ramps between levels are not permitted.

~~(m)~~(p) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living room, bedrooms, and bathrooms.

~~(n)~~(q) ~~Windows shall be operable and~~ All windows that are designed to be operable shall be maintained operable. For the purposes of this Rule, "operable" means a window that may be opened and shut to allow outdoor-air ventilation. To inhibit participant elopement from any window, the window opening may be restricted to a six-inch opening.

~~(o)~~ Before starting any construction or alterations, the overnight respite services program shall consult with the local building code official for information about required permits and construction requirements.

~~(p)(r)~~ The facility shall ~~comply with the sanitation rules of the North Carolina Division of Public Health, Environmental Health Services Section,~~ meet sanitation requirements set forth in 15A NCAC 18A .1600, Rules Governing the Sanitation of Residential Care Facilities, which are incorporated herein by ~~reference~~ reference, including subsequent amendments and editions. ~~The "Rules Governing the Sanitation of Residential Care Facilities," 15A NCAC 18A .1600 are available for inspection at the North Carolina Department of Health and Human Services, Division of Public Health, Environmental Health Services Section, 5605 Six Forks Road, Raleigh, North Carolina 27609. Copies of these Rules may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699 1632 at no cost or can be accessed electronically free of charge at~~ <http://ehs.ncpublichealth.com/docs/rules/294306-4-1600.pdf>. [<https://www.oah.nc.gov/>]

~~(q)(s)~~ The facility shall have a copy of the following inspection reports available for review upon request by the Construction Section:

- (1) a ~~current~~ sanitation inspection report from the sanitation division of the county health department; department dated within the past 12 months; and
- (2) a ~~current~~ fire and safety inspection report from the local fire ~~marshal.~~ marshal dated within the past 12 months.

~~(r)(t)~~ The building housing a facility shall be equipped with a fire alarm system with pull stations on each floor and sounding devices that are audible throughout the building. The fire alarm system shall be equipped to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection. The fire alarm system shall be installed in accordance with National Fire Protection Association (NFPA) 72, which is incorporated herein by ~~reference~~ reference, including subsequent amendments and ~~editions~~ editions, and may be ~~obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of ninety six dollars and 50 cents (\$96.50).~~ accessed electronically free of charge at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=72>.

(u) Underwriters Laboratory (U.L.) listed heat detectors are required in attics and basements and shall be connected to the fire alarm system. These heat detectors shall be interconnected and provided with battery backup. Corridors shall be equipped with smoke detectors that are connected to the fire alarm system.

~~(s)(v)~~ A building housing an overnight respite services program or an adult day care or adult health care program shall be equipped with a wet pipe sprinkler system in accordance with NFPA 13, which is incorporated herein by ~~reference~~ reference, including subsequent amendments and ~~editions~~ editions, and may be ~~obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of one hundred and three dollars (\$103.00).~~ accessed electronically free of charge at <https://www.nfpa.org/codes-and-standards/nfpa-13-standard-development/13>.

History Note: Authority G.S. 131D-6.1;

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1 10A NCAC 13E .0308 is amended with changes under temporary procedures as follows:

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3 **10A NCAC 13E .0308 BEDROOMS**

4 (a) There shall be bedrooms sufficient in number and size to meet the individual needs of the ~~participant~~ **participants**
5 according to their age and gender.

6 (b) A room used as a bedroom shall meet the requirements of this Rule and be approved by the Construction Section.

7 (c) A room accessed only through a bathroom, kitchen, or another bedroom shall not be approved for a participant's
8 bedroom.

9 (d) Bedrooms occupied by one participant shall be provided with not less than 100 square feet of floor area, ~~including~~
10 ~~excluding accessory areas such as vestibule, closet, or wardrobe space.~~ vestibules, closets, wardrobes, or bathrooms.

11 Bedrooms occupied by two participants shall be provided with not less than 160 square feet of floor area, ~~including~~
12 ~~excluding accessory areas such as vestibule, closet, or wardrobe space.~~ vestibules, closets, wardrobes, or bathrooms.

13 (e) The total number of participants assigned to a bedroom shall be based on the square footage requirements of
14 Paragraph (d) of this Rule as approved by the Construction Section for that bedroom.

15 (f) A bedroom shall not be occupied by more than two participants.

16 (g) Each participant bedroom shall have one or more operable windows with views to the outdoors. **For facilities with**
17 **a licensed capacity of less than seven participants, at least one operable window shall meet the requirements of the**
18 **North Carolina State Building Code: Residential Code for emergency egress.** ~~[for facilities with a licensed capacity~~
19 ~~of less than seven (7) participants.]~~ **For facilities with a licensed capacity of** ~~[seven]~~ 7 **to** ~~[twelve]~~ 12 **participants,**
20 **windows shall meet the requirements of the North Carolina State Building Code: Building Code.** The gross window
21 area shall be equal to at least eight percent of the floor space required by Paragraph (d) of this **Rule.** ~~[Rule, and shall~~
22 ~~be equipped with insect proof screens. To inhibit participant elopement, the window opening may be restricted to a~~
23 ~~six inch opening, except windows meeting the emergency egress requirements of the North Carolina State Building~~
24 ~~Code: Residential Code.]~~ The windows shall have a maximum sill height of 44 inches.

25 (h) Bedroom closets or wardrobes shall be large enough to provide each participant with a minimum of 22 cubic feet
26 of clothing storage, one-half of which shall be for hanging clothes with an adjustable-height hanging bar.

27
28 *History Note: Authority G.S. 131D-6.1;*

29 *Eff. April 1, 2017-2017:*

30 **Emergency Amendment Eff. July 1, 2026:**

31 **Temporary Adoption Amendment Eff. October 7, 2026.**

1 10A NCAC 13E .0309 is amended with changes under temporary procedures as follows:

2
3 **10A NCAC 13E .0309 BATHROOM**

4 (a) An overnight respite services program shall have a minimum of one bathroom for each every six or fewer respite
5 participants. A bathroom shall contain a toilet, a ~~lavatory~~, ~~[sink]~~ sink, and one of the following:

- 6 (1) a roll-in shower designed and equipped for unobstructed shower chair entry and use;
7 (2) a bathtub accessible on three sides; or
8 (3) a manufactured walk-in bathtub or a similar manufactured bathtub designed for transfer of
9 participants into the bathtub that is accessible on one short side and one long side of the bathtub.

10 (b) The A bathroom required by Paragraph (a) of this Rule may be shared with the adult day care program or adult
11 day health program only after the Division of Aging ~~and Adult Services~~ of the Department of Health and Human
12 Services determines, in writing, that the requirements of 10A NCAC 06R .0401(g) for an adult day care facility and
13 10A NCAC 06S .0301 for an adult day health facility are met.

14 (c) A bathroom shall be designed to provide privacy. A bathroom with two or more toilets shall have privacy partitions
15 or curtains for each toilet. Each bathtub or shower shall have privacy partitions or curtains. [The requirements of this
16 Paragraph shall apply to new and existing facilities.]

17 (d) The entrance to the bathroom shall not be through a kitchen, another participant's bedroom, or another bathroom.

18 (e) The bathroom shall be located so that there is no more than 40 feet between any participant's bedroom door and a
19 participant-use bathroom door.

20 (f) Hand grips shall be installed at all toilets, bathtubs, and showers used by participants. Hand grips shall be physically
21 attached [mechanically fastened or anchored] to the walls with screws, nails or other fasteners, be located to help
22 participants in entering and exiting bathtubs, showers, manufactured walk-in tubs, or similar bathing fixtures, and be
23 on the wall adjacent to toilets.

24 (g) Nonskid surfacing or strips shall be installed to the floor or bottom of ~~showers and bathtubs~~. showers, bathtubs,
25 or similar bathing fixtures.

26 (h) A bathroom shall have ~~mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor~~
27 ~~area.~~ an exhaust system per the North Carolina State Building Code: Residential Code for facilities licensed for less
28 than [seven] 7 participants, and per the North Carolina State Building Codes: Building Codes for facilities licensed
29 for [seven] 7 to [twelve] 12 participants. The mechanical ducted exhaust vent shall be vented directly to the outdoors.

30 (i) The bathroom floor shall have a non-slippery water-resistant covering.

31
32 *History Note: Authority G.S. 131D-6.1;*

33 *Eff. April 1, 2017-2017;*

34 *Emergency Amendment Eff. July 1, 2026;*

35 *Temporary Adoption Amendment Eff. October 7, 2026.*

1 10A NCAC 13E .0403 is amended with changes under temporary procedures as follows:

3 **10A NCAC 13E .0403 STAFF AND STAFFING**

4 (a) Each staff person shall:

- 5 (1) have a job description that reflects actual duties and responsibilities determined by the program and
6 shall be signed by the administrator and the employee;
- 7 (2) ~~have a tuberculin skin test within 12 months prior to hire and annually thereafter; be tested for~~
8 ~~tuberculosis disease in compliance with control measures adopted by the Commission for Public~~
9 ~~Health as specified in 10A NCAC 41A .0205. [-0205, which is hereby incorporated by reference,~~
10 ~~including subsequent amendments;]~~
- 11 (3) be able to implement all of the program's policies and procedures as defined in Rule .0501 of this
12 Subchapter and accident, fire safety, and emergency procedures for the protection of the participants
13 in accordance with the Rules of this Subchapter and Chapter 131D of the general statutes;
- 14 (4) be informed of the confidential nature of participant information and protect and preserve the
15 information from unauthorized use and disclosure;
- 16 (5) not hinder or interfere with the exercise of the participants rights as defined by program ~~policy;~~
17 policy in accordance with Rule .0501 of this Subchapter;
- 18 (6) have no substantiated findings listed on the North Carolina Health Care Personnel Registry pursuant
19 to G.S. 131E-256;
- 20 (7) have a statewide criminal background check, upon hire, of the past five years in accordance with
21 G.S. 143B-932; and
- 22 (8) cooperate with inspectors and the monitoring and licensing agencies in complying with the rules of
23 this Subchapter.

24 (b) Any staff member left in charge of the care of participants shall be 18 years or older.

25 (c) ~~The staffing pattern shall be adequate~~ There shall be staff on duty to meet the needs of each participant, with at
26 least one staff ~~person present on duty and awake~~ at all times qualified to administer medications as defined by Rule
27 .0702 of this Subchapter and trained to provide personal care and supervision to current participants.

28 (d) In a facility with a census of 7 to 12 participants, there shall be at least two staff persons on duty and awake at all
29 times who are responsible for providing personal care and supervision to participants, with at least one of the staff
30 persons qualified to administer medications as defined by Rule .0702 of this Subchapter. The staff persons shall be
31 trained to provide personal care and supervision to current participants.

32 (e) Staff assigned to provide personal care and supervision duties shall not provide food service and housekeeping
33 duties, except when housekeeping duties are incidental to the rendering of care services and do not hinder the assigned
34 staff's duties of care or immediate response to participants, nor impede the assigned staff member's ability to monitor
35 the participants. For the purposes of this Rule, "food service duties" means tasks performed by staff related to serving
36 meals to participants, including assisting with food preparation, arranging and setting the dining tables, serving food

1 and beverages, and cleaning the dining room after meal service is complete, and "housekeeping duties" means tasks
2 performed by staff such as cleaning and sanitizing facility common areas and resident rooms.

3 (f) There shall be additional staff employed to provide food service and housekeeping duties.

4 ~~(d)(g)~~ Services required by participants beyond personal care and supervision shall not only be provided unless by
5 licensed health professionals in accordance with North Carolina licensing laws. staff satisfies the license requirements
6 applicable to such services.

7 (h) There shall be documentation on file in the facility of staff qualifications required by Subparagraphs (1), (2), (6),
8 and (7) in Paragraph (a) of this Rule and medication administration competency evaluation as required in Rule .0702
9 of this Subchapter.

10
11 *History Note: Authority G.S. 131D-6.1;*

12 *Eff. April 1, 2017; 2017;*

13 *Emergency Amendment Eff. July 1, 2026;*

14 *Temporary Amendment Eff. October 7, 2026.*