

NORTH CAROLINA REGISTER

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PUBLISHED BY

The Office of Administrative Hearings

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
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This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 06F .0101-.0105.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

Proposed Effective Date: August 1, 2019

Public Hearing:

Date: April 23, 2019

Time: 10:00 a.m.-11:00 a.m.

Location: Conference Room, Capehart-Crocker House, 424 N. Blount Street, Raleigh, NC 27603

Reason for Proposed Action: S.L. 2018-5, Section 371(i) states "...[T]he Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019."

Comments may be submitted to: Shanon M. Gerger, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301; phone (984) 236-0008; email adminrules@doa.nc.gov

Comment period ends: May 31, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)

- ☐ Approved by OSBM
☐ No fiscal note required

CHAPTER 06 - STATE PROPERTY AND CONSTRUCTION

SUBCHAPTER 06F – TELECOMMUNICATIONS FACILITIES FOR BROADBAND PROVIDERS

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 06F .0101 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "Agency" means the body to which State owned or leased property is allocated.
- (2) "DIT" means the NC Department of Information Technology.
- (3) "WISP" means Wireless Internet Service Provider.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

01 NCAC 06F .0102 APPLICATION

Upon referral from the DIT, an Agency requesting the construction and placement of broadband equipment on state property shall submit to the Division of State Property a completed PO-2, Disposition of Real Property form, as set forth in 01 NCAC 06B .0300 of these Rules, and BB-2, WISP Application form, that shall include the following information:

- (1) description of the state property;
- (2) information pertaining to the lessee; and
- (3) equipment to be used and scope of work.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

01 NCAC 06F .0103 PROCEDURES

- (a) The Division of State Property shall evaluate the information provided on the application and determine fair market value of the lease pursuant to G.S. 146-29.1.
- (b) The Division of State Property shall generate the lease, license, or easement and provide it to the Agency for review and distribution to the broadband provider.
- (c) Prior to the construction or placement of broadband equipment, the broadband provider and the Division of State Property shall execute duplicate original agreements.
- (d) The Agency shall ensure all equipment is installed in accordance with the terms set out in the lease, license or easement.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

01 NCAC 06F .0104 TERMS AND CONDITIONS

The following terms and conditions shall apply to the location and installation of equipment by a broadband provider on state owned or leased property:

- (1) All lease and license agreements shall be a five year term with two optional five year renewal periods.
- (2) All lease and license agreements shall include an access agreement and a non-exclusive utility easement.
- (3) The fair market value of the state-owned or leased property is subject to an annual rate adjustment as set forth in the lease.
- (4) Rent shall be paid annually on the anniversary of the executed lease.
- (5) An Agency may require an escrow fund as part of the broadband provider's lease or license agreement.
- (6) Site specific protocols as set out in the lease and license agreement for construction and maintenance procedures shall be adhered to by the Applicant during installation and during any maintenance.
- (7) Upgrades or changes to equipment shall be reviewed by the Division of State Property for compliance with the existing lease prior to any changes to equipment.
- (8) The Agency shall not supply space in any existing equipment buildings, nor electricity.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

01 NCAC 06F .0105 TERMINATION

Upon termination of the agreement, at the Agency's request, the broadband provider shall remove equipment and cabling from the tower, ice-bridge, and within fenced property. The Agency shall then inspect the property to ensure compliance with this Paragraph. Upon a finding by the Agency that all equipment and cabling is removed, and the property has been returned to pre-leased conditions, the escrow funds shall be returned to the broadband provider within 60 days.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0339 and .0370.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncwildlife.org

Proposed Effective Date: September 1, 2019

Public Hearing:

Date: May 1, 2019

Time: 10:00 a.m.

Location: WRC Headquarters 5th Floor, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action:

15A NCAC 10F .0339 – McDowell County submitted a formal application and resolution requesting a no-wake zone within 50 yards of the shoreline of a peninsula near the end of Hunt Camp Drive, in Old Wildlife Club Subdivision on Lake James. The no-wake zone is necessary to mitigate hazards to boater and recreationist safety around the peninsula that is adjacent to a busy cove with blind curve, and with several long docks where people swim and are endangered by heavy wakes. There is no speed restriction on vessels travelling in the main channel of the lake. Private individuals will purchase and place markers to mark the zone at no expense to the state. No Fiscal Note is required.

15A NCAC 10F .0370 – WRC proposes an amendment to the water safety rule for a portion of the Tar River in Rocky Mount from west of the Falls Road bridge, extending eastward and ending at the Rocky Mount Millpond Dam, to correctly designate the regulated area as a Safety Zone, where vessel and swimmer entry is prohibited, rather than a no-wake zone where vessel speed is regulated. The City of Rocky Mount is the designated entity for placement and maintenance of buoys and other signage that is necessary to implement the safety zone Rule. Responsibility for maintenance of the markers was incorrectly removed from the Rule during an amendment as part of the 2016 Periodic Review of Rules. Therefore, the word maintenance has been replaced as a technical correction. No expense to the City or State is incurred for this technical correction and a fiscal note is not required.

Comments may be submitted to: Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email regulations@ncwildlife.org

Comment period ends: May 31, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)
☐ Approved by OSBM
☒ No fiscal note required

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule ~~applies~~ shall apply to the following waters ~~located~~ on Lake James in McDowell County:

- (1) the cove east of Old Wildlife Club Road, beginning at a line from a point on the northwest shore at 35.73649 N, 81.92296 W to a point on the southeast shore at 35.73595 N, 81.92194 W;
- (2) ~~those~~ the waters including coves, shore to shore in the vicinity of the Marion Moose Club property, east of ~~the~~ a line from a point on the north shore at 35.72026 N, 81.97292 W, to a point on the south shore at 35.71908 N, 81.97257 W, and south of ~~the~~ a line from a point on the west shore at 35.72214 N, 81.96807 W to a point on the east shore at 35.72305 N, 81.96642 W;
- (3) ~~Morgan Cove;~~ Cove, west and south of a line at the mouth from a point on the north shore at 35.74220 N, 81.94189 W to a point on the south shore at 35.74142 N, 81.94155 W;
- (4) ~~that area~~ within 50 yards of the shoreline at the New Manna Baptist Youth Camp; Camp at 880 Marina Drive in Nebo;
- (5) ~~that area~~ within 50 yards of the shoreline at Burnett's Landing; Burnette's Landing at 3385 Hankins Road in Marion;
- (6) the coves adjacent to Lake James State Park swimming area southeast of a line from a point on the northeast shore at 35.73402 N, 81.90450 W to a point on the southwest shore at 35.73268 N, 81.90614 W;
- (7) ~~that area~~ within 50 yards of camping areas in the Lake James State Park;
- (8) ~~that area including~~ the cove between Waterglyn Subdivision and Lakeview Shores Subdivision and extending Subdivision, contiguous with the waters within 50 yards of the shoreline of Lakeview Point Subdivision Subdivision, and within 50 yards of the boat launching ramp at the Marion Lake Club; Club at the end of Lake Club Lane;
- (9) Plantation Point Cove southwest of a line from a point on the north shore at 35.71672 N,

- 81.98065 W to a point on the south shore at 35.71616 N, 81.98010 W;
- (10) ~~Waterglyn Subdivision Cove; Cove, west of Lentz Landing Lane;~~
- (11) within 50 yards of the boat ramp at Lake James Landing on Lake James Landing Drive, near the mouth of the North Fork of the Catawba River;
- (12) ~~that area~~ within 50 yards of the Bear Creek Marina; Marina at 608 Marina Drive in Nebo;
- (13) ~~the waters~~ within 50 yards of the peninsula at Waterglyn Subdivision at the end of Waterglyn Way, from the point on land east of the cove east of Old Wildlife Club Road at 35.73600 N, 81.92185 W to a point on land west of Waterglyn Subdivision Cove at 35.73549 N, 81.91900 W; and
- (14) ~~the waters~~ within 50 yards of the boat ramp in Hidden Cove. Cove Public Boat Access at 3657 NC-126 in Nebo; and
- (15) within 50 yards of the peninsula at Old Wildlife Club Subdivision at the end of Hunt Camp Drive and Screech Owl Drive, from a point on land at 35.75171 N, 81.92186 W, southeast to a point on land at 35.74914 N, 81.91782 W.

(b) Speed Limit. No person shall operate ~~any motorboat or a~~ vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any ~~vessel, surfboard or waterskis~~ vessel shall permit ~~the same~~ it to enter any marked swimming area located on the ~~regulated area.~~ waters of Lake James in McDowell County.

(d) Placement of Markers. The Board of Commissioners of McDowell County is the designated agency for placement of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0370 CITY OF ROCKY MOUNT MOUNT – ROCKY MOUNT MILLPOND DAM SAFETY ZONE

(a) ~~Regulated Areas. Area. This Rule shall apply to the~~ The waters of the Tar River shore to shore, beginning up at the N.C. Highway Bridge on Peachtree Street, eastward 100 yards and ending at the Rocky Mount Mill Dam, west of the Falls Road bridge on N.C. Highway 48/43 Business at a point at 35.96016 N, 77.80447 W, extending eastward and ending at the Rocky Mount Millpond Dam and associated abutments and structures, shall be a designated safety zone. Access by swimming or entry of a person in or upon a vessel or any floating object shall be prohibited within the safety zone.

~~(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft, or other floating object shall be permitted within the exclusionary zone established in Paragraph (a) of this Rule.~~

~~(c)(b)~~ Paragraph (b)(a) of this Rule shall not apply to persons who, with consent of the City of Rocky Mount, require access for

PROPOSED RULES

maintaining or repairing facilities associated with the Rocky Mount Millpond ~~Dam~~ Dam, abutments and structures or the Rocky Mount ~~Mill~~ Mills.

~~(d)~~(c) Placement of Markers. The City of Rocky Mount shall be the designated ~~as the~~ entity for placement and maintenance of

~~buoys and other signs indicating the areas in which boating and swimming are prohibited by this Rule.~~ implementing this Rule.

Authority G.S. 75A-3; 75A-15.

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on February 21, 2019 Meeting.

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<u>Without Regard to Income</u>	10A NCAC 10 .1004*	33:08 NCR
<u>Responsibility for Eligibility Determination</u>	10A NCAC 10 .1005	33:08 NCR
<u>Determination of Income Eligibility</u>	10A NCAC 10 .1006*	33:08 NCR
<u>Requirements for Determination and Redetermination of Eli...</u>	10A NCAC 10 .1007*	33:08 NCR
<u>General Fee Policy</u>	10A NCAC 10 .1101*	33:08 NCR
<u>Amount and Collection of Recipient Fees</u>	10A NCAC 10 .1102*	33:08 NCR
<u>Adjustment in Fees</u>	10A NCAC 10 .1103*	33:08 NCR

<u>Definitions</u>	10A NCAC 10 .1201*	33:08 NCR
<u>Notice</u>	10A NCAC 10 .1202*	33:08 NCR
<u>Filing</u>	10A NCAC 10 .1203*	33:08 NCR
<u>Appeal to the Local Purchasing Agency</u>	10A NCAC 10 .1204*	33:08 NCR
<u>Operator Appeal to Division of Child Development and Ear...</u>	10A NCAC 10 .1205*	33:08 NCR

MENTAL HEALTH, DD/SAS, COMMISSION FOR

<u>Involuntary Administration of Psychotropic Medication</u>	10A NCAC 26D .1104*	33:06 NCR
<u>Psychotropic Medication Education</u>	10A NCAC 26D .1105*	33:06 NCR
<u>Use of Seclusion</u>	10A NCAC 26D .1202*	33:06 NCR
<u>Use of Restraint</u>	10A NCAC 26D .1203*	33:06 NCR
<u>Protective Devices</u>	10A NCAC 26D .1204*	33:06 NCR
<u>Involuntary Referrals and Transfers</u>	10A NCAC 26D .1206*	33:06 NCR

SOCIAL SERVICES COMMISSION

<u>Regional Departments of Social Services Financial Obligat...</u>	10A NCAC 67A .0301*	33:06 NCR
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INDUSTRIAL COMMISSION

<u>Location of Main Office and Hours of Business</u>	11 NCAC 23B .0101	33:08 NCR
<u>Official Forms</u>	11 NCAC 23B .0102*	33:08 NCR
<u>Filing Fees</u>	11 NCAC 23B .0103*	33:08 NCR
<u>Electronic Filings with the Commission, How to File</u>	11 NCAC 23B .0104*	33:08 NCR
<u>Contact Information</u>	11 NCAC 23B .0105*	33:08 NCR
<u>Medical Malpractice Claims by Unrepresented Prison Inmates</u>	11 NCAC 23B .0202*	33:08 NCR
<u>Infants and Incompetents</u>	11 NCAC 23B .0203*	33:08 NCR
<u>Motions</u>	11 NCAC 23B .0204*	33:08 NCR
<u>Mediation</u>	11 NCAC 23B .0205*	33:08 NCR
<u>Hearing Costs</u>	11 NCAC 23B .0208*	33:08 NCR
<u>Appeals to the Full Commission</u>	11 NCAC 23B .0302*	33:08 NCR
<u>Proposed Issues on Repeal</u>	11 NCAC 23B .0303	33:08 NCR
<u>Briefs to the Full Commission</u>	11 NCAC 23B .0305	33:08 NCR
<u>Motions Before the Full Commission</u>	11 NCAC 23B .0307*	33:08 NCR
<u>Stays</u>	11 NCAC 23B .0308*	33:08 NCR
<u>Oral Argument</u>	11 NCAC 23B .0310*	33:08 NCR
<u>Stays</u>	11 NCAC 23B .0402*	33:08 NCR
<u>Waiver of Rules</u>	11 NCAC 23B .0501	33:08 NCR
<u>Form T-42 - Application for Appointment of Guardian Ad Litem</u>	11 NCAC 23L .0105*	33:08 NCR

PUBLIC SAFETY, DEPARTMENT OF

<u>Purpose</u>	14B NCAC 05B .0101*	33:09 NCR
<u>Applications for Grants</u>	14B NCAC 05B .0201*	33:09 NCR
<u>Review of Proposals</u>	14B NCAC 05B .0202*	33:09 NCR
<u>Administration of Grants</u>	14B NCAC 05B .0203*	33:09 NCR
<u>Grant Termination or Suspension</u>	14B NCAC 05B .0301*	33:09 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Water Supply Watershed Protection Program: Purpose</u>	15A NCAC 02B .0620*	32:21 NCR
<u>Water Supply Watershed Protection Program: Definitions</u>	15A NCAC 02B .0621*	32:21 NCR

<u>Water Supply Watershed Protection Program: Applicability ...</u>	15A NCAC 02B .0622*	32:21 NCR
<u>Water Supply Watershed Protection Program: Program Admini...</u>	15A NCAC 02B .0623*	32:21 NCR
<u>Water Supply Watershed Protection Program: NonPoint Sourc...</u>	15A NCAC 02B .0624*	32:21 NCR
<u>Animal Waste Residuals Management</u>	15A NCAC 02T .1310*	G.S. 150B-21.5(a)(3),(5)

TRANSPORTATION, DEPARTMENT OF

<u>Temporary Bridge Weight Limits and Closings</u>	19A NCAC 02D .0408*	33:07 NCR
<u>Aircraft Landing and Taking Off on Highways</u>	19A NCAC 02E .0412*	33:07 NCR
<u>Fencing within Right-of-Way</u>	19A NCAC 02E .0418*	33:07 NCR
<u>Cultivating Crops and Maintaining Pastures within Right-o...</u>	19A NCAC 02E .0419*	33:07 NCR
<u>Construction within Right-of-Way</u>	19A NCAC 02E .0420*	33:07 NCR
<u>Utility Wires or Cables Over Highways</u>	19A NCAC 02E .0421*	33:07 NCR
<u>Application for Designation</u>	19A NCAC 02E .1006*	33:07 NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Licensees and Students</u>	21 NCAC 14H .0401	33:04 NCR
<u>Rule Compliance and Enforcement Measures</u>	21 NCAC 14H .0505	33:04 NCR

MEDICAL BOARD

<u>Identification Requirements</u>	21 NCAC 32W .0112	33:05 NCR
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PHARMACY, BOARD OF

<u>Drugs and Devices to be Dispensed</u>	21 NCAC 46 .2403	33:10 NCR
<u>Responsibilities of Pharmacist-Manager</u>	21 NCAC 46 .2502*	33:10 NCR

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

<u>Designation as Substance Abuse Counselor Intern</u>	21 NCAC 68 .0203*	33:08 NCR
<u>Certified Substance Abuse Counselor Certification</u>	21 NCAC 68 .0205*	33:08 NCR
<u>Renewal Requirements for Counselor, Criminal Justice Addi...</u>	21 NCAC 68 .0208*	33:08 NCR
<u>Process for Clinical Supervisor Certification</u>	21 NCAC 68 .0211*	33:08 NCR
<u>Process for Residential Facility Director Certification</u>	21 NCAC 68 .0212*	33:08 NCR
<u>Licensure Requirements for Initial Applicants for Licensu...</u>	21 NCAC 68 .0305*	33:08 NCR

STATE HUMAN RESOURCES COMMISSION

<u>Salary Rate</u>	25 NCAC 01D .0913*	33:05 NCR
<u>Posting and Announcement of Vacancies</u>	25 NCAC 01H .0631*	33:04 NCR

The following rules are subject to Legislative Review.

HHS - HEALTH BENEFITS, DIVISION OF

<u>Definition of Provider Abuse</u>	10A NCAC 22F .0301*	32:13 NCR
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TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 10 .0101 SCOPE

The rules in this Chapter shall apply to child care facilities that participate in the Subsidized Child Care Assistance Program.

History Note: Authority G.S. 143B-10; 143B-153; S.L. 1985, c. 757, s. 155(q); Eff. October 26, 1979; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990; February 1, 1986; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;

Amended Eff. March 1, 2019.

10A NCAC 10 .0102 DEFINITIONS

In addition to the terms defined in G.S. 110-86(2), (3), (4a), (6), (7), and (8), the following definitions shall apply to this Chapter:

- (1) "Child with special needs" means:
 - (a) a child who is determined by the Division of Public Health, Children's Developmental Services Agency, to be developmentally delayed or have an established condition pursuant to 10A NCAC 43G .0110, incorporated by reference including subsequent amendments. A copy of the Rule can be found at no cost at <http://reports.oah.state.nc.us/ncac/title%2010a%20%20health%20and%20human%20services/chapter%2043%20%20personal%20health/subchapter%20g/10a%20ncac%2043g%20.0110.pdf>;
 - (b) a child who is determined by the local educational agency (LEA) to have a disability as defined in G.S. 115C-106.3; or
 - (c) a child who is determined to be a child with special needs by a Local Managing Entity –Managed Care Organization (LME-MCO) as defined in G.S. 122C-3(20b) and (20c).
- (2) "Director" means the Director of the Division of Child Development and Early Education.
- (3) "Division" means the Division of Child Development and Early Education, Department of Health and Human Services, located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (4) "Foster parent" means anyone other than a child's parent or legal custodian who is providing full time care for a child who is in the custody of a North Carolina county department of social services.
- (5) "Funds" means all state and federal funds appropriated and otherwise made available to the Department of Health and Human Services that are administered by the Division of Child Development and Early Education for the Subsidized Child Care Assistance Program.
- (6) "Homeless children" is defined in section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), incorporated by reference including subsequent amendments and editions. A copy of the Act can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-17/pdf/2016-06073.pdf>.
- (7) "Local Purchasing Agency" means the local agency responsible for administering the Subsidized Child Care Assistance Program.

- (8) "Market Rates" means the child care subsidy market rates set forth in the annual appropriations act enacted by the General Assembly.
- (9) "NC FAST" means the electronic integrated case management system developed and managed by the North Carolina Department of Health and Human Services.
- (10) "Owner" means any person with a five percent or greater equity interest in a child care facility.
- (11) "Private Agency" means a for profit or non-profit non-governmental entity.
- (12) "Provider" means the owner of a child care center or family child care home.
- (13) "Recipient" means the parent or responsible adult approved for subsidized child care assistance pursuant to Section .1000 of this Chapter.
- (14) "Recipient Fee" means that portion of an operator's payment that is paid to the operator by a recipient approved for subsidy assistance.
- (15) "Subsidized Child Care Assistance Program" means the North Carolina program to assist eligible families in paying the cost of child care services.
- (16) "Supplemental Payment" means payment or reimbursement by the Division for additional expenses incurred by the operator to care for a child with special needs.

History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1986; Amended Eff. June 1, 2016; December 1, 2011; April 1, 2001; February 1, 1996; Readopted Eff. March 1, 2019.

10A NCAC 10 .0201 APPLICABILITY

History Note: Authority G.S. 143B-153(2a); Eff. October 26, 1979; Amended Eff. April 1, 2001; January 1, 1987; April 1, 1985; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Repealed Eff. March 1, 2019.

10A NCAC 10 .0202 PAYMENT RATES

History Note: Authority G.S. 143B-153(8)a; Eff. January 1, 1987; Amended Eff. April 1, 2001; August 1, 1994; July 1, 1990; Repealed Eff. March 1, 2019.

10A NCAC 10 .0203 PAYMENT RATES FOR SUBSIDIZED CHILD CARE

- (a) With the exception of Centers that are certified as developmental day centers by the Division, the payment rates for child care facilities shall be limited to the market rate or the child care facility's private rate, whichever is lower.

(b) For centers that are certified as developmental day centers by the Division of Child Development and Early Education and that serve children who meet the definition of special needs set forth in 10A NCAC 10 .0910, the following shall apply:

- (1) payment rates for children with special needs served in developmental day centers shall be calculated by deducting the total revenues per child per month from the total costs per child. That rate shall then be multiplied by the current inflation percentage provided by the Office of State Budget and Management;
- (2) payment rates for typically developing children served in developmental day centers shall exclude those costs associated exclusively with serving children with special needs; and
- (3) payment rates for children with special needs and typically developing children served in developmental day centers shall be calculated every two years and shall be implemented as State and federal funding allows.

(c) A facility approved for participation in the Subsidized Child Care Assistance Program that provides care to children with special needs, as defined in 10A NCAC 10 .0910, that is not a certified developmental day facility shall be paid a supplement to the facility's approved rate, subject to available funding, as follows:

- (1) the facility shall submit a request to the Local Purchasing Agency for approval for a supplemental payment;
- (2) the supplemental payment shall be based on additional documented costs incurred by the facility in serving the child with special needs, such as learning materials, equipment, and additional staff for one-on-one care;
- (3) the costs shall be determined by the Local Purchasing Agency and the facility based on the plan developed to meet the child's individual needs; and
- (4) the Local Purchasing Agency shall submit requests for all one-time supplemental payments in excess of one thousand dollars (\$1,000) and all recurring supplemental payments in excess of three hundred dollars (\$300.00) to the Division. The Division shall approve all requests that meet the child's development needs. All other supplemental payments shall be approved by the Local Purchasing Agency.

(d) Payment rates for part time care shall be prorated according to the number of hours the child is scheduled to attend the child care facility.

(e) Recipient fees imposed in accordance with the annual appropriations act shall be subtracted from the facility's payment rate to determine the State payment amount for an individual child.

(f) Subsidized Child Care Assistance funds shall not be used to pay for services provided by the Department of Health and Human Services, Division of Public Health or the Department of Public Instruction, Division of Exceptional Children's Services for that

portion of the service delivery costs that are reimbursed by the Division of Public Health or Department of Public Instruction.

History Note: Authority G.S. 143B-153(8)a; 143B-153(2a); Eff. January 1, 1987; Amended Eff. March 1, 2012; April 1, 2001; February 1, 1996; December 1, 1992; July 1, 1990; Readopted Eff. March 1, 2019.

10A NCAC 10 .0301 DEFINITION OF FUND

History Note: Authority G.S. 143B-153(2a); S.L. 1985, c. 479, s. 95-97; Eff. October 26, 1979; Temporary Amendment Eff. July 1, 1982, for a period of 120 days to expire on October 28, 1982; Legislative Objection Lodged Eff. July 20, 1982; Amended Eff. April 1, 2001; February 1, 1996; February 1, 1986; August 1, 1982; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Repealed Eff. March 1, 2019.

10A NCAC 10 .0306 ALLOCATION

History Note: Authority G.S. 143B-153(2a); Eff. October 26, 1979; Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985; Repealed Eff. March 1, 2019.

10A NCAC 10 .0307 PAYMENT

Operators shall enter accurate attendance information, as defined in 10A NCAC 10 .0602(b), into the NC FAST Provider Portal no later than the fifth day of the month for the preceding month's attendance in order to receive payment for services provided by the operator.

History Note: Authority G.S. 143B-153(2a); Eff. October 26, 1979; Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985; Readopted Eff. March 1, 2019.

10A NCAC 10 .0310 REQUIREMENTS FOR THE ADMINISTRATION OF THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) Each Local Purchasing Agency shall maintain records of program administration, including recipient records documenting eligibility and ongoing service, and provider records related to investigations of fraudulent misrepresentation, sanctions, and noncompliance with program requirements. These records shall be retained in accordance with most recent Records Retention and Disposition Schedule Spreadsheet issued by the Office of the Controller, North Carolina Department of Health and Human Services or until all audits begun within the retention period are complete, whichever is longer. The Records Retention and Disposition Schedule Spreadsheet is incorporated by reference,

including subsequent amendments and editions, and is available free of charge at

<https://www2.ncdhhs.gov/control/retention/retention.htm>.

(b) Each Local Purchasing Agency that administers funding for the State's Subsidized Child Care Assistance Program shall provide records of program administration upon request for review by local, State, or federal agency representatives.

(c) The Division shall require the Local Purchasing Agency to repay funds not spent in accordance with applicable State or federal regulations.

(d) Each Local Purchasing Agency that administers the State's Subsidized Child Care Assistance Program and also owns and operates a child care facility receiving Subsidized Child Care Assistance Program funds shall develop and implement a conflict of interest policy that shall include provisions for:

- (1) parental choice of child care facility for recipients of subsidized child care; and
- (2) separate management of the Subsidized Child Care Assistance Program and the child care facility owned or operated by the agency.

(e) Operators enrolled in the Subsidized Child Care Assistance Program shall maintain all records and forms for a period of three years or until all audits continued beyond the three-year period are completed by local, State, or federal officials. Program records and forms shall be maintained at the location of the child care facility and shall be made available for review upon request by local, State, or federal officials. Operators shall make available for review a record of payments received from other sources and each schedule of parent payments due if requested. For the purposes of this Paragraph, program records and forms shall include:

- (1) all enrollment and attendance records, including those required by 10A NCAC 10 .0602;
- (2) private paying parent rates;
- (3) receipts; and
- (4) other fiscal records related to the operator's participation in the Subsidized Child Care Assistance Program, including records related to a child care facility's operating budget.

History Note: Authority G.S. 143B-153(2a);

Eff. April 1, 2001;

Amended Eff. December 1, 2011;

Readopted Eff. March 1, 2019.

10A NCAC 10 .0311 PROVIDER APPEAL TO LOCAL PURCHASING AGENCY

10A NCAC 10 .0312 APPEAL TO DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION SUBSIDY SERVICES REVIEW PANEL

History Note: Authority G.S. 143B-153;

Eff. December 1, 2011;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0501 SCOPE

History Note: Authority G.S. 143B-153(2a);

Eff. July 1, 1992;

Amended Eff. April 1, 2001;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0502

APPROVAL

10A NCAC 10 .0503

LENGTH OF CONTRACT

10A NCAC 10 .0504

ADMINISTRATION OF FUNDS

10A NCAC 10 .0505

ADMINISTRATION OF

PROGRAM

10A NCAC 10 .0506

RECORDS

History Note: Authority G.S. 143B-153(2); 143B-153(2a);

Eff. July 1, 1992;

Amended Eff. December 1, 2011; April 1, 2001;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0601 STANDARDS FOR FACILITIES PARTICIPATING IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) An operator that wishes to participate in the Subsidized Child Care Assistance Program shall satisfy all applicable State child care requirements, as codified in G.S. 110-85, et seq. and 10A NCAC 09, and shall enroll in the Subsidized Child Care Assistance Program as set forth in 10A NCAC 10 .0602(a).

(b) An operator that wishes to participate in the Subsidized Child Care Assistance Program, with the exception of religious-sponsored facilities operating in accordance with G.S. 110-106 and Department of Defense facilities operating in accordance with G.S. 110-106.2, shall hold a North Carolina child care license.

(c) Out-of-State operators wishing to participate in the Subsidized Child Care Assistance Program shall hold a license to operate a child care facility in the state where they are located.

(d) The operator of a facility participating in the Subsidized Child Care Assistance Program shall ensure that the facility complies with all applicable provisions of the Civil Rights Act of 1964.

History Note: Authority G.S. 143B-153(2a);

Eff. February 1, 1986;

Amended Eff. April 1, 2001; March 1, 1996; July 1, 1990;

Readopted Eff. March 1, 2019.

10A NCAC 10 .0701 STANDARDS FOR FAMILY CHILD CARE HOMES PARTICIPATING IN THE SUBSIDIZED CHILD CARE PROGRAM

History Note: Authority G.S. 143B-153;

Eff. January 1, 1985;

Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0901

SCOPE

History Note: Authority G.S. 143B-153;

Eff. July 1, 1983;

Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0902 METHODS OF SERVICE

PROVISION

10A NCAC 10 .0903 DEFINITION OF SERVICE

History Note: Authority G.S. 143B-153;

Eff. July 1, 1983;

Amended Eff. April 1, 2001; February 1, 1996;

Repealed Eff. March 1, 2019.

10A NCAC 10 .0904 AVAILABILITY OF FUNDING

If the availability of funding is less than the amount needed to serve all eligible children, each Local Purchasing Agency shall establish the priority for serving families. The order of priority shall be stated in writing, approved by the Division in accordance with annual appropriations act and federal law, and the Local Purchasing Agency shall provide a copy of the written order of priority to applicants for child care assistance.

History Note: Authority G.S. 143B-153; 45 CFR 98.46;

Eff. July 1, 1983;

Amended Eff. April 1, 2001; March 1, 1996; February 1, 1994;

July 1, 1990;

Readopted Eff. March 1, 2019.

10A NCAC 10 .0905 SUPPORT FOR EMPLOYMENT AND TRAINING FOR EMPLOYMENT

(a) The Subsidized Child Care Assistance Program shall pay for child care services provided to support:

- (1) employment of the recipient; and
- (2) training leading to employment of the recipient.

(b) The Subsidized Child Care Assistance Program shall pay for child care services for recipients the Local Purchasing Agency determines are unable to work or to participate in training leading to employment, and who are also incapable of providing care for the child. The Local Purchasing Agency shall document the reasons for this determination in the recipient's record, which may include the following:

- (1) illness;
- (2) disability;
- (3) complications related to pregnancy;
- (4) hospitalization;
- (5) substance abuse treatment; or
- (6) that the recipient is elderly.

(c) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and is absent from employment, training, or an educational program with arrangements to continue the same employment, training, or educational program, child care services shall continue for up to 90 days. If an absence from work, training, or an educational program extends beyond 90 days, the Local Purchasing Agency shall determine on the basis of individual circumstances whether child care services shall continue beyond that time period. The Local Purchasing Agency shall document the reasons for such extension in the recipient's record, which may include the following:

- (1) the recipient is on maternity leave and intends to return to work;

- (2) the recipient has been temporarily laid off and the employer has indicated that employment will resume within a month; or
- (3) the recipient works in a high-demand field and is likely to find new employment within a month.

(d) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and becomes unemployed but is seeking employment, funding for child care services shall be provided for 90 days. Funding for services may be extended if the Local Purchasing Agency determines such extension is warranted, provided the reason for the extension is documented in the recipient's record and may be based upon the following:

- (1) the likelihood of obtaining employment based upon prior job search activities;
- (2) the recipient has a job interview scheduled; or
- (3) the recipient is waiting to hear the results of a job interview.

(e) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and no longer attends a training or educational program, child care services shall continue to be provided for 90 days after the recipient stops attending the training or educational program. Continuation of funding for services may be extended if the Local Purchasing Agency determines such extension as warranted, provided the reason for the extension is documented in the recipient's record and may be based on:

- (1) recommendations from teaching staff at educational institutions;
- (2) the individual needs and abilities of the recipient;
- (3) whether the recipient has developed career goals; or
- (4) whether the recipient has developed a personal plan for completing training.

(f) For purposes of this Rule, training leading to employment shall include:

- (1) continuation of high school;
- (2) basic education or a high school education or its equivalent in community colleges or technical institutes; and
- (3) post-secondary education or skills training, up to a maximum of 20 months enrollment, but shall not include assistance when the recipient is participating in graduate or post-graduate studies.

History Note: Authority G.S. 143B-153; 45 CFR 98.21;

Eff. July 1, 1983;

Amended Eff. June 1, 2016; April 1, 2001; March 1, 1996; July 1, 1990;

Readopted Eff. March 1, 2019.

10A NCAC 10 .0906 SUPPORT FOR CHILD PROTECTIVE AND CHILD WELFARE SERVICES

(a) The Subsidized Child Care Assistance Program shall provide assistance to enable a child to remain in his or her own home while receiving child protective services. The child shall not receive

assistance unless he or she is receiving protective services through the local department of social services pursuant to G.S. 7B.

(b) The Subsidized Child Care Assistance Program shall provide assistance to children receiving Child Welfare Services. Child Welfare Services shall mean the protection of a child from abuse, neglect, or dependency or the provision of a safe permanent home for a child as described in G.S. 7B-101; G.S. 7B-300; G.S. 48-1-101; G.S. 108A-14 (11) and (12); G.S. 108A-48; 10A NCAC 70A; or 10A NCAC 70B.

(c) The provisions of this Rule shall not apply to children living in a foster care arrangement.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .0907 SUPPORT FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS

(a) The Subsidized Child Care Assistance Program shall provide assistance to a child who does not meet any eligibility criteria in this Section if the child's emotional, cognitive, social, or physical development is delayed or is at risk of being delayed, in accordance with this Rule.

(b) The Local Purchasing Agency shall document the type of developmental delay or the risk of delay in writing in the recipient's record. Information regarding the delay or risk of delay shall be provided by the child's parent, child care director, teacher, social worker, doctor, or other medical professional; however, medical or psychological reports shall not be required for a determination of eligibility.

(c) In making a determination of eligibility, the Local Purchasing Agency shall consider factors that include whether the child:

- (1) has a severe disability or special needs;
- (2) lives in a situation that inhibits his or her ability to develop normally, including living with elderly or adults with disabilities; and
- (3) would benefit from early intervention in a child care setting that may prevent the child from experiencing serious, ongoing problems later in life.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001; July 1, 1990;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .0908 LIMITATIONS

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;
Repealed Eff. March 1, 2019.*

10A NCAC 10 .0909 RECIPIENT CHOICE

(a) Recipients shall choose a child care facility approved for participation in the Subsidized Child Care Assistance Program pursuant to Section .0600 of these Rules to provide child care services for the recipient's eligible children. The Local Purchasing

Agency shall accept the recipient's choice of facility if there is space available in the facility and the child's enrollment will not violate the facility's licensed capacity as set forth in G.S. 110-91(6).

(b) During the eligibility determination, Local Purchasing Agencies shall notify recipients of their right to choose any approved child care facility.

*History Note: Authority G.S. 143B-153; 45 CFR 98.30; 45 CFR 98.31;
Eff. July 1, 1991;
Amended Eff. April 1, 2001;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .0910 CHILDREN WITH SPECIAL NEEDS

The Local Purchasing Agency shall have on file an Individualized Education Program (IEP) as defined in G.S. 115C-106.3, an Individualized Family Service Plan (IFSP) as defined in 10A NCAC 27G .0903, a Section 504 Plan as defined in 29 USC 794, or a Person-Centered Plan (PCP) as defined in 10A NCAC 70G .0402 for all children with special needs who have been determined eligible for the Subsidized Child Care Assistance Program that documents the special need or disability in accordance with these Rules.

*History Note: Authority G.S. 143B-153(2a);
Eff. December 1, 1992;
Amended Eff. December 1, 2011; April 1, 2001; February 1, 1996;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1001 BASIC ELIGIBILITY CRITERIA

An individual shall be eligible to receive subsidized child care services in accordance with Section .0900 of these Rules if:

- (1) he or she meets the requirements in 10A NCAC 10 .1002 and .1003; or
- (2) the service is available without regard to income pursuant to 10A NCAC 09 .1004.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001; February 1, 1996; October 1, 1991;
July 1, 1990;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1002 INCOME ELIGIBLE STATUS

(a) For the purpose of this Rule, the term "income unit" means persons who reside in the same household and who are responsible for the financial support of the individual whose eligibility for child care services is being determined.

(b) For the purposes of the rules in this Chapter, "income unit size" means the number of individuals in the income unit, and "gross income of the income unit" means the total amount of the income used to determine child care eligibility.

(c) If an individual meets any of the criteria set forth in 10A NCAC 10 .0905 or .0907, the Local Purchasing Agency shall determine:

- (1) the number of persons in the individual's income unit through the eligibility application in NC FAST or through the eligibility interview process; and
 - (2) the amount of gross income available to the income unit in accordance with 10A NCAC 10 .1006.
- (d) Individuals who meet any of the criteria set forth in 10A NCAC 10 .0905 or .0907 shall be eligible to receive Subsidized Child Care Services, provided that:
- (1) for initial eligibility and annual redeterminations, the gross income of the income unit:
 - (A) for children ages 0 to 5 years old shall not exceed the state's maximum income eligibility limit of 200 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit;
 - (B) for children ages 6 to 12 years old shall not exceed the state's maximum income eligibility limit of 133 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit; or
 - (C) for any child with special needs as defined 10A NCAC 10 .0910 shall not exceed the state's maximum income eligibility limit of 200 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit.42 USC 9902(2) and 82 FR 8831 are incorporated by reference including subsequent amendments and editions and are available at no cost at [https://www.govinfo.gov/content/pkg/USCODE-2010-title42-chap106-sec9902.pdf](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap106-sec9902.pdf) and <https://www.govinfo.gov/content/pkg/FR-2017-01-31/pdf/2017-02076.pdf>.
 - (2) for individuals whose income increases during the annual eligibility period, the maximum income eligibility limit for children of all ages and special needs status shall not exceed 85 percent of the state median income for that income unit size.
- (e) The following individuals living in a residence shall be separate income units for the purposes of determining eligibility for child care services:
- (1) biological and adoptive parents and their minor children. A step-parent shall be included in the income unit with his or her spouse if the children in need of care include the step-parent and spouse's biological or adoptive children and step-siblings;
 - (2) a minor parent and his or her children;
 - (3) each person 18 years of age or older; and
 - (4) each child living with anyone other than their biological or adoptive parents.
- (f) Income to be considered when computing the gross income of the income unit shall include:
- (1) gross earned wages or salary, which are defined as earnings received for work performed as an employee, including wages, salary, commissions, tips, piece-rate payments, and cash bonuses earned, before any deductions such as for taxes, bonds, pensions, and union dues;
 - (2) gross income from taxable self-employment income after deductions made for business expenses and any other expense that is deductible for purposes of federal or state tax returns;
 - (3) Social Security benefits including Social Security pensions, survivors' benefits, and permanent disability insurance payments;
 - (4) dividends, interest on savings or bonds, income from estates or trusts, royalties, and adjusted gross rental income on houses, stores, or other property;
 - (5) pensions and annuities paid by an employer or union or through an insurance company;
 - (6) workers' compensation;
 - (7) unemployment insurance benefits;
 - (8) alimony including direct and indirect payments such as rent and utility payments;
 - (9) child support, direct or indirect, such as health care costs, school tuition, camps, lessons, and afterschool activities;
 - (10) pensions paid to veterans or survivors of deceased veterans;
 - (11) On-the-Job Training (OJT) payments;
 - (12) Job Training Partnership Act (JTPA) payments made to an adult;
 - (13) AmeriCorps stipend;
 - (14) the taxable amount of Armed Forces pay;
 - (15) work release payments;
 - (16) Cherokee Tribal Per Capita Income paid to adult family members;
 - (17) work-study payments, if the income is from a program not administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs; and
 - (18) recurring cash contributions paid to the parent, such as severance pay or child support not paid pursuant to a written agreement or court-ordered arrangement.
- (g) The following sources of income shall not be counted when computing the gross income of the income unit:
- (1) Work First Family Assistance;
 - (2) Supplemental Security Income (SSI);
 - (3) non-recurring lump sum payments such as Social Security benefits, workers' compensation, alimony, veteran's benefits, and

- housing assistance paid to or on behalf of a family member by HUD;
- (4) foster care assistance payments;
- (5) Adoption Assistance payments;
- (6) payments or trust funds from the Indian Claims Commission;
- (7) payments from the Alaska Native Claims Settlement Act;
- (8) income from sale of personal assets including stocks, bonds, house, car, and insurance;
- (9) money borrowed;
- (10) tax refunds, including Earned Income Tax Credits or Dependent Care Credits;
- (11) gifts or contributions, including cash, monetary gifts, and charitable contributions given on a regular basis to meet the recipient's needs;
- (12) non-cash contributions from non-legally responsible adults, such as food, clothing, furniture, or non-cash military benefits such as insurance;
- (13) Emergency Assistance, Low Income Energy Assistance Program, Crisis Intervention Program, General Assistance, or CP&L Share Program payments;
- (14) Section VIII housing subsidy;
- (15) capital gains;
- (16) the value of food stamp benefits allotted under the Food Stamp Act of 1977;
- (17) free and reduced lunch program;
- (18) food subsidy programs;
- (19) Relocation or Acquisition Act payments;
- (20) earnings of a dependent child under 18 years of age, unless the child is a minor parent of a child needing child care;
- (21) loans, grants, scholarships, and money received to pay for job training;
- (22) home produce utilized for household consumption;
- (23) Volunteers in Service to America (VISTA) earnings;
- (24) all subsidized housing and housing allotments, including military housing allotments. If rent is provided by an organization on a recurring basis, it shall be counted as income;
- (25) money received from an employer as an employee benefit for child care; and
- (26) work-study payments, if the income is from the College Work-Study Program administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs.

History Note: Authority G.S. 143B-153; 42 USC 9902; 45 CFR 98.20; Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1992; October 1, 1991; Readopted Eff. March 1, 2019.

10A NCAC 10 .1003 INCOME ELIGIBILITY LEVELS

History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001; July 1, 1992; Repealed Eff. March 1, 2019.

10A NCAC 10 .1004 WITHOUT REGARD TO INCOME

The Subsidized Child Care Assistance Program shall provide assistance without regard to income for:

- (1) child care services that are provided in conjunction with protective services as described in 10A NCAC 10 .0906(a);
- (2) children receiving foster care services who are in the custody of the county department of social services and are residing in licensed foster care homes or in the care of adults other than their parents; and
- (3) child care services that are provided to a child receiving Child Welfare Services as described in 10A NCAC 10 .0906(b).

History Note: Authority G.S. 143B-153(2a); Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; February 1, 1986; Readopted Eff. March 1, 2019.

10A NCAC 10 .1005 RESPONSIBILITY FOR ELIGIBILITY DETERMINATION

History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; Repealed Eff. March 1, 2019.

10A NCAC 10 .1006 VERIFICATION OF INCOME

(a) An individual who applies for child care services shall provide to the Local Purchasing Agency verification of the amount and sources of his or her countable income as set forth in 10A NCAC 10 .1002. The amount and source of income shall be verified by one of the following:

- (1) a copy of a source document, such as wage stubs, pay statements, and award letters;
- (2) identification of an existing agency record confirming the required information; or
- (3) electronic verification through Online Verification Service (OVS) within NC FAST as defined in 10A NCAC 10 .0102.

(b) If the Local Purchasing Agency cannot verify the recipient's income using the methods described in Paragraph (a) of this Rule, then the amount and source of income shall be verified by one of the following:

- (1) the recipient shall provide a written statement of the amount and sources of their income to the Local Purchasing Agency; or
- (2) the Local Purchasing Agency shall confirm sources of income through a telephone

conversation or email communication with the source of the income.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1007 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION OF ELIGIBILITY

(a) The Local Purchasing Agency shall determine initial eligibility, in accordance with Sections .0900 and .1000 of this Chapter, and shall redetermine eligibility every 12 months thereafter.

(b) If the Local Purchasing Agency determines that a recipient is eligible, the recipient shall remain eligible for the 12 month eligibility period unless:

- (1) the recipient ceases to be employed, in training leading to employment, or in an educational program, as described in 10A NCAC 10 .0905, for more than 90 days;
- (2) the recipient changes residency to outside the State;
- (3) the recipient's income exceeds 85 percent of the State Median Income; or
- (4) the Local Purchasing Agency or the Division issues the recipient a sanction for fraudulent misrepresentation in accordance with 10A NCAC 10 .0308.

(c) If the Local Purchasing Agency, upon redetermination, determines that the family exceeds the State's income eligibility limits, the family shall continue to receive subsidized child care services for 12 months if their income is at or below the federal income limit of 85 percent of the State Median Income.

(d) Annual federal income limits shall be determined in accordance with the U.S. Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services, incorporated by reference including subsequent amendments and editions. A copy of these guidelines are available free of charge at <http://aspe.hhs.gov/poverty/index.cfm>.

*History Note: Authority G.S. 143B-153; 45 CFR 98.21(a)(1); 45 CFR 98.21(b)(1);
Eff. July 1, 1983;
Amended Eff. June 1, 2016; April 1, 2001;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1101 GENERAL RECIPIENT FEE POLICY

(a) Recipient fees for child care services shall be 10 percent of the income unit's gross monthly income as set forth in 10A NCAC 10 .1002; however, no fees shall be charged to a recipient if child care services are provided in the following circumstances:

- (1) if child care services are provided in conjunction with protective services as described in 10A NCAC 10 .0906(a);

- (2) if child care services are provided to a child receiving Child Welfare Services as described in 10A NCAC 10 .0906(b); or
- (3) if a child with no income is living with someone other than his or her biological or adoptive parent or is living with someone who does not have court-ordered financial responsibility.

(b) Except as provided in Paragraph (a) of this Rule, the recipient shall be assessed a fee for child care services.

*History Note: Authority G.S. 143B-153(2a);
Eff. July 1, 1983;
Amended Eff. April 1, 2001; July 1, 1992; July 1, 1990; February 1, 1986;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1102 AMOUNT AND COLLECTION OF RECIPIENT FEES

(a) The amount of fees charged to a recipient shall be in accordance with the annual appropriations act.

(b) The child care provider shall collect recipient fees on a monthly basis.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001; July 1, 1990;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1103 ADJUSTMENTS IN FEES

(a) If recipient medical expenses exceed 10 percent of a recipient's gross income as set forth in 10A NCAC 10 .1002 in any eligibility period, the recipient's fee shall be reassessed based on the recipient's adjusted income. The recipient's income shall be adjusted by deducting the amount of medical expenses that exceed 10 percent of the recipient's gross income.

(b) If the plan of care is for less than a full day, the recipient fee shall be assessed in accordance with the annual appropriations act.

*History Note: Authority G.S. 143B-153;
Eff. July 1, 1983;
Amended Eff. April 1, 2001; December 1, 1992; July 1, 1992; July 1, 1990;
Readopted Eff. March 1, 2019.*

10A NCAC 10 .1201 DEFINITIONS

In addition to the terms defined in G.S. 110-86 and in 10A NCAC 10 .0102, the following definitions shall apply to the terms used in this Section:

- (1) "Administrative Review Decision" means the decision made by the State Subsidy Services Appeals Panel that is made after review and analysis of documentation related to an appeal pursuant to this Section.
- (2) "File or Filing" means personal delivery, delivery by certified mail, or delivery by overnight express mailed to the current Division Director or the Subsidy Appeals Coordinator, North Carolina Division of Child

Development and Early Education, 2201 Mail Service Center, Raleigh, NC 27699-2200.

- (3) "Initial Review" means the review by the Local Purchasing Agency of the operator's appeal.
- (4) "Local Appeal Hearing" means a hearing held by a hearing officer assigned by the Local Purchasing Agency after the Initial Review.
- (5) "State Subsidy Services Appeals Panel" or "Panel" means the North Carolina Division of Child Development and Early Education internal review panel.

History Note: Authority G.S. 108A-79; 143B-153;
Eff. March 1, 2019.

10A NCAC 10 .1202 NOTICE

Notice shall be given by one of the methods for service of process pursuant to G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt. If notice cannot be accomplished pursuant to G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

History Note: Authority G.S. 143B-153;
Eff. March 1, 2019.

10A NCAC 10 .1203 FILING

For purposes of this Chapter, the following apply:

- (1) A document or paper shall be deemed filed as of the date it is delivered to the Division Director or the Subsidy Appeals Coordinator.
- (2) Filings shall be denied under the following circumstances:
 - (a) the filing is not delivered as set forth in Item (1) of this Rule; or
 - (b) the filing fails to comply with the Rules of this Section.

History Note: Authority G.S. 143B-153;
Eff. March 1, 2019.

10A NCAC 10 .1204 APPEAL TO THE LOCAL PURCHASING AGENCY

(a) Appeals by recipients from services determinations pursuant to Section .1000 of this Chapter, changes in recipient fees pursuant to Section .1100 of this Chapter, terminations of payment pursuant to 10A NCAC 10 .1007, or a sanctions issued by the Local Purchasing Agency in accordance with 10A NCAC 10 .0308 shall be made in accordance with G.S. 108A-79.

(b) Procedures for an operator to appeal to the Local Purchasing Agency are as follows:

- (1) An operator wishing to contest an action shall contact the Local Purchasing Agency in writing to request an initial review. Requests shall be

made within 30 calendar days after the date of the Local Purchasing Agency action.

- (2) The Local Purchasing Agency shall make a determination on the initial review within 10 business days of the request for an initial review. Within 30 calendar days of notice of the determination of the initial review by the Local Purchasing Agency, the operator may request a local appeal hearing by the Local Purchasing Agency.
- (3) The local appeal hearing shall be held within five business days of receipt of the request for a hearing. The Local Purchasing Agency shall grant a delay of up to 10 additional business days at the written request of the operator, but in no event shall the local appeal hearing be held more than 15 business days after the receipt of the request for a hearing.
- (4) The Local Purchasing Agency shall serve a written statement of decision within 10 business days following the local hearing. The decision shall include the facts and conclusions that support the determination by the Local Purchasing Agency.
- (5) The Local Purchasing Agency shall include with its written statement of decision instructions for appealing its decision in accordance with this Rule.
- (6) If the operator is not satisfied with the final decision of the Local Purchasing Agency, he or she may appeal to the State Subsidy Services Appeals Panel by filing a notice of appeal within 30 calendar days of receipt of the written statement of decision in accordance with this Rule.

History Note: Authority G.S. 143B-153; 108A-79;
Eff. March 1, 2019.

10A NCAC 10 .1205 OPERATOR APPEAL TO DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION

(a) The following persons may appeal a decision of a Local Purchasing Agency or the Division to the Panel within 15 calendar days after having exhausted the appeals process at the appropriate Local Purchasing Agency or within 15 calendar days after the Division takes action as described in Subparagraphs (2) and (3) of this Paragraph:

- (1) an operator to whom a Local Purchasing Agency has issued a sanction pursuant to 10A NCAC 10 .0308;
- (2) an operator whom a Local Purchasing Agency or the Division has failed to approve for participation in or has terminated participation from the Subsidized Child Care Assistance Program pursuant to Section .0600 of this Chapter; or
- (3) an operator contesting the determination of an overpayment pursuant to 10A NCAC 10 .0309.

(b) Upon notification of an appeal filed pursuant to this Section, the Local Purchasing Agency shall, within five business days of the date of notification, forward the appeal record to the Division Director or Subsidy Appeals Coordinator, with a copy to the appellant, consisting of the following:

- (1) a copy of its final decision;
- (2) the signed agreement between the Local Purchasing Agency and the operator, where applicable; and
- (3) all supplementary documentation considered during the local appeals process.

(c) The Panel shall complete its review and notify the appealing party and the Local Purchasing Agency of its decision in writing within 30 business days of the Panel's receipt of the appeal record as follows:

- (1) the decision shall include the facts and conclusions that support the determination by the Panel; or
- (2) the decision may be delayed up to an additional 15 business days if the Panel lacks sufficient information to render a decision at the initial administrative review. The Panel may request additional information from the Local Purchasing Agency or the operator.

(d) The appealing party may appeal the administrative review decision by filing a petition for a contested case hearing pursuant to G.S. 150B-23 and in accordance with G.S. 110-94. Appeals from the Panel shall be filed within 30 calendar days of notice of the Panel's decision, in accordance with G.S. 150B-23(f).

(e) The administrative review decision may direct a Local Purchasing Agency to take an action or reverse an action based upon its review of the record as set forth in Paragraph (b) of this Rule.

(f) An operator may appeal a final determination pursuant to 10A NCAC 10 .0308(k) by filing a petition for a contested case hearing pursuant to G.S. 150B-23 and in accordance with G.S. 110-94.

*History Note: Authority G.S. 143B-153;
Eff. March 1, 2019.*

10A NCAC 22F .0301 DEFINITION OF PROGRAM ABUSE BY PROVIDERS

Program abuse by providers as used in this Chapter consists of incidents, services, or practices inconsistent with accepted fiscal or medical practices which cause financial loss to the Medicaid program or its beneficiaries, or which are not reasonable or which are not necessary, including:

- (1) billing for care or services at a frequency or amount that is not medically necessary, as defined by 10A NCAC 25A .0201;
- (2) separate billing for care and services that are:
 - (a) part of an all-inclusive procedure; or
 - (b) included in the daily per-diem rate;
- (3) billing for care and services that are provided by an unlicensed person or person who does not meet the requirements set out in the Medicaid

- (4) State Plan or Clinical Coverage Policies for the care or services, as allowed by law;
- (5) failure to provide and maintain, within accepted medical standards for the community, quality of care;
- (6) failure to provide and maintain within accepted medical standards for the community, as set out in 10A NCAC 25A .0201, medically necessary care and services;
- (7) failure to comply with requirements of certification or failure to comply with the terms and conditions for the submission of claims set out in Rule .0104(e) of this Subchapter;
- (8) abuse as defined by 42 C.F.R. 455.2, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>;
- (9) cause for termination as described in 42 C.F.R. 455.101, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>;
- (10) violations of State and federal Medicaid statutes, federal Medicaid regulations, the rules of this Subchapter, the State Medicaid Plan, and Medicaid Clinical Coverage policies;
- (11) failure to notify the Division of Health Benefits (Division) within 30 calendar days of learning of any adverse action initiated against any required license, certification, registration, accreditation, or endorsement of the provider or any of its officers, agents, or employees;
- (12) billing the Medicaid beneficiary or any other person for items and services reimbursed by the Division;
- (13) discounting client accounts to a third party agent or paying a third party agent a percentage of the amount collected;
- (14) failure to refund any monies received in error to the Division within 30 calendar days of discovery;
- (15) failure to file mandatory reports or required disclosures with the Division within the time-frames established in federal or state statute, rule, or regulation;
- (16) billing for claims that are inaccurate, incomplete, or not personally provided by the provider, its employees, or persons with whom the provider has contracted to render services, under its direction;
- (17) billing for services provided at or from a site location not associated with the approved provider number, except for hospital services as set forth in 42 C.F.R. 413.65;
- (18) failure to notify the Division in writing of any change in information contained in the Medicaid provider enrollment application

- within 30 calendar days of the event triggering the reporting obligation;
- (18) failure to retain or submit to the Division upon request documentation for services billed to the Division;
- (19) failure to grant the Division access to provider facilities upon the Division's request; or
- (20) failure to perform services or supply goods in accordance with all requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the 1973 Rehabilitation Act, the 1975 Age Discrimination Act, the 1990 Americans With Disabilities Act, Section 1557 of the Affordable Care Act, and all applicable federal and state statutes, rules, and regulations relating to the protection of human subjects of research.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-54.2; 108A-63; 42 C.F.R. Part 455; Eff. April 15, 1977; Readopted Eff. October 31, 1977; Amended Eff. May 1, 1984; Readopted Eff. Pending Legislative Review.

10A NCAC 26D .1104 INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION

(a) Psychotropic medication may be administered to any non-consenting client who has a mental illness and is receiving inpatient mental health treatment if any one or more of the following conditions exist:

- (1) failure to treat the client's illness or injury would pose an imminent substantial threat of injury or death to the client or those around him; or
- (2) there is evidence that the client's condition is worsening and, if not treated, is likely to produce acute exacerbation of a chronic condition that would endanger the safety or life of the client or others; and:
 - (A) the evidence of substantial and prolonged deterioration is corroborated by medical history; and
 - (B) the source of the history is documented in the client's record.

(b) Medication refusal shall mean a client has refused to take medication within 30 minutes of the initial offer. A client who accepts medication within 30 minutes of the initial offer shall not be considered to have refused medication.

(c) Medication Refusal:

- (1) All incidents of medication refusal shall be:
 - (A) reported as promptly as possible to the psychiatrist who is treating the client; and
 - (B) documented on progress notes and the medication chart by staff responsible for administering the medication.

- (2) The administering staff shall attempt to determine the reason for refusal by questioning the client and encouraging him to accept the medication. Such shall be documented in the client's record.
- (3) A member of the treatment team shall discuss the reasons for refusal directly with the client and attempt to resolve those concerns that are the source of the refusal before a forced medication order is written.

(d) Initial Emergency Situation:

- (1) In an initial emergency situation the physician:
 - (A) may initiate procedures and write an order for administering emergency forced medication for a period not to exceed 72 hours; and
 - (B) shall document in the client's record the pertinent circumstances and rationale for the psychotropic medication.
- (2) Psychotropic medication may be administered if the physician determines that the condition set forth in Paragraph (a) of this Rule exists and:
 - (A) the medication is a generally accepted treatment for the client's condition;
 - (B) there is a substantial likelihood that the treatment will effectively reduce the signs and symptoms of the client's illness; and
 - (C) the proposed medication is the least intrusive of the possible treatments.

In all cases, the medication shall not exceed the dosage expected to accomplish the treatment and the client shall be monitored for adverse reactions and side effects.

- (3) Continuation of emergency situation:
 - (A) If needed, two subsequent emergency periods of 72 hours may be authorized only after the attending psychiatrist has received the written or verbal concurrence from another psychiatrist not currently involved in the client's treatment.
 - (B) If the client continues to refuse medication after it is determined that psychotropic medication is still warranted, procedures for administering medication in a non-emergency situation shall be implemented.

(e) Non-Emergency Situations:

- (1) If a client refuses psychotropic medication in a non-emergency situation, the attending physician shall:
 - (A) make every effort to determine the cause of the refusal;
 - (B) inform the client of indications for psychotropic medication, including benefits and risk, and the advantages

- and disadvantages of alternate courses of treatment; and
 - (C) request his or her consent.
- (2) The treatment team may also assist in efforts to explain the advantages of medication to the client.
- (3) The client's record shall contain documentation that efforts have been made to determine the cause of refusal and advantages of medication.
- (4) The physician shall initiate a referral to the Involuntary Medication Committee if the client continues to refuse medication. The Committee shall:
 - (A) determine whether either of the conditions as set forth in Paragraph (a) of this Rule exists before authorizing an involuntary medication order; and
 - (B) apply the criteria set forth in Subparagraphs (d)(1) and (2) of this Rule in making its determination.
 - (C) If neither of the conditions set forth in Paragraph (a) of this Rule exists, the client shall not be involuntarily medicated.
- (f) Involuntary Medication Committee:
 - (1) The members of the Involuntary Medication Committee shall be appointed by the Chief of Psychiatry and shall consist of a psychiatrist, a psychologist, and a mental health nurse who is a Registered Nurse.
 - (A) If the psychiatrist who issued the involuntary medication order is the individual who normally sits on the committee, another psychiatrist shall serve in that capacity.
 - (B) Other prison staff who have pertinent information that may be useful to the committee in making its determination shall be required by the committee to attend the hearing.
 - (2) In conducting the hearing, the committee chairman, appointed by the Chief of Psychiatry, shall ensure that the client:
 - (A) has received written and verbal notice of the time, date, place, and purpose of the hearing;
 - (B) is informed of his or her right to hear evidence providing the basis for the involuntary medication, the right to call witnesses on his or her behalf; and the right to request that the Client Representative attend the hearing as set forth in Subparagraph (g)(2) of this Rule;
 - (C) attends the hearing unless his or her clinical condition is such that his or her attendance is not feasible. In this case, the Committee shall:
 - (i) state the reasons for determining that the presence of the client is not feasible;
 - (ii) allow the client to be interviewed in his or her room by the client representative and one or more members of the Committee; and
 - (iii) allow the client representative an opportunity to present facts relevant to whether an involuntary medication order should be issued;
- (D) shall be allowed a reasonable number of witnesses, to be determined by the committee chairman, or:
 - (i) written statements may be considered in lieu of direct testimony; and
 - (ii) specific client witnesses may be excluded from direct testimony if the unit superintendent or designee determines a justifiable security risk would occur if they were brought to the hearing site; and
- (E) be given the opportunity to question any staff who present evidence that supports the need to involuntarily medicate.
- (3) After the committee has received all relevant information, the committee shall:
 - (A) consider the facts and arrive at a majority decision;
 - (B) ensure that the authorization to involuntarily medicate shall not exceed 30 days;
 - (C) prepare and file in the client's record a written summary of the evidence presented and the rationale for the decision; and
 - (D) consult an attorney from the Attorney General's Office, assigned to represent the Department, concerning the legal propriety of forcibly administering medication in a given case.
- (4) If, after the initial 30 day period, involuntary medication is still deemed necessary, the psychiatrist may again present the case to the Involuntary Medication Committee, which:
 - (A) shall conduct a review of the record and the reasons presented in support of continuing involuntary medication; and
 - (B) may then authorize the administration of involuntary medication for 90

additional days. Subsequent 90-day periods may be authorized only after similar reviews.

(g) Client Representative:

- (1) If a client is recommended for forced medication on a non-emergency basis, the Chief of Psychiatry or his or her designee shall appoint a member of the treatment staff to serve as a Client Representative, whose role shall include:
 - (A) assisting the client in verbalizing the reasons for his or her refusal of psychotropic medications in meetings with his or her treatment team;
 - (B) providing this information to the Involuntary Medication Committee; and
 - (C) preparing a summary of the reasons for the refusal and documenting it in the client's record.
- (2) The Client Representative shall appear before the Involuntary Medication Committee whenever he feels that it is in the best interest of the client or at the client's request.
- (3) When reviewing a case involving the involuntary administration of medication, the Involuntary Medication Committee shall consider oral or written comments from the Client Representative.

(h) If physical force is actually employed, documentation of all actions relating to the forceful administration of medication shall be included in the client's record and reported to the Unit Superintendent on a "Use of Force Report" (DC-422).

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 26D .1105 PSYCHOTROPIC MEDICATION EDUCATION

(a) To ensure the client's understanding of psychotropic medication, individual or group medication education shall be provided to each client:

- (1) who is to begin receiving, or is to be maintained on, psychotropic medication; and
- (2) by the prescribing physician or other person approved by the physician;

(b) Medical education that has been provided to a client shall be documented in the client's record.

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 26D .1202 USE OF SECLUSION

(a) Seclusion shall be used only under one of the following conditions:

- (1) on an emergency basis when it is necessary to prevent immediate harm to the client or to others; or
- (2) on a non-emergency basis if that seclusion will resolve the precipitating crisis.

(b) Emergency seclusion shall last no longer than is necessary to control the client.

(c) Seclusion shall not exceed seven days without the review and approval of an internal committee in accordance with Paragraph (e) of this Rule.

(d) Observations or reviews of any client in seclusion shall be made as follows:

- (1) any client placed in seclusion shall be observed no less frequently than every 30 minutes;
- (2) a clinician may extend this interval up to 60 minutes if such an observation would not affect the health, safety, or welfare of the client;
- (3) documentation for extending the observation shall be placed in the client's record;
- (4) observations by a clinician shall be made at least daily or, if the clinician is not present at the facility, observations by a health professional shall be reported by telephone to a clinician; and
- (5) reviews by an internal committee shall be made in accordance with Paragraph (e) of this Rule.

(e) Committee review:

- (1) If it appears that seclusion may be indicated for a period to exceed seven days:
 - (A) an internal committee consisting of a clinician, a nurse or member of the medical staff, and a member of the administrative staff shall review the use of seclusion and interview the client; and
 - (B) continued use shall not exceed the initial 7 days without the approval of this committee.
- (2) Following its initial review, the committee shall review the case at intervals not to exceed 30 days.

(f) If a client is placed in seclusion, his or her client record shall contain the following documentation:

- (1) the rationale and authorization for the use of seclusion, including placement in seclusion pending review by the responsible clinician;
- (2) a record of the observation of the client as required in Subparagraph (d)(1) of this Rule;
- (3) each review by the responsible clinician as required in Subparagraph (d)(4) of this Rule, including a description of the client's behavior and all significant changes that may have occurred; and
- (4) each review by the internal committee as required in Paragraph (e) of this Rule.

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 26D .1203 USE OF RESTRAINT

(a) Restraint shall be used only under the following circumstances:

- (1) after less restrictive measures, such as counseling and seclusion, have been attempted or if clinically determined to be inappropriate or inadequate to avoid injury to self or others; and
- (2) either:
 - (A) upon the order of a clinician to control a client who has attempted, threatened, or accomplished harm to himself or others; or
 - (B) upon the authorization of the officer-in-charge on an emergency basis if believed necessary to prevent immediate harm to the client or to others.
- (3) In determining if restraint is indicated, a clinician shall consider whether the client:
 - (A) has inflicted an injury to himself or to others and, if so, the nature and extent of such injury; or
 - (B) threatens, through words or gestures, to inflict injury to himself or others and the nature of the threat.

(b) When a client exhibits behavior indicating the use of restraints and under the conditions of Paragraph (a) of this Rule, the following procedures shall be followed:

- (1) If, in the judgment of any staff member, immediate restraint is necessary to protect the client or others, the client shall be referred immediately to a clinician for observation and treatment.
- (2) If there is insufficient time to make the referral or if a clinician is not immediately available:
 - (A) the staff in charge may employ emergency use of restraint;
 - (B) the client shall be reviewed within four hours of the initial restraint, and a restraint may be ordered by a clinician pursuant to Paragraph (a) of this Rule. This may be accomplished by:
 - (i) telephone contact between the senior health professional at the facility and the clinician; and
 - (ii) if such review cannot be obtained, the client shall be released from restraint.
 - (C) a restraint order shall not exceed four hours. At the expiration of the restraint order, the client shall be released from restraint unless a new order is issued; and
 - (D) a subsequent order for continuing restraint shall be based on:
 - (i) the client's present condition and behavior; and

- (ii) reasons other than the original reasons for restraint, unless the order indicates the original reasons are considered applicable at the time of the subsequent order.

(c) If the client is restrained and subject to injury by another client, a professional staff member shall remain continuously present with the client. Observations and interventions shall be documented in the client record.

(d) All orders for continuation of restraint shall be reviewed and documented in intervals not to exceed four hours thereafter, either by personal examination or telephone communication between health professionals and the responsible clinician.

(e) All orders of restraint issued or approved by a clinician shall include written authorization to correctional staff or health professionals to release the client when he or she is no longer dangerous to him or herself or to others.

(f) The responsible clinician shall be notified upon release of a client from restraint.

(g) Observations or reviews of all clients in restraint shall be made as follows:

- (1) observations no less frequently than every 30 minutes;
- (2) observations every four hours by the responsible clinician either personally or through reports from health professionals; and
- (3) reviews by an internal committee in accordance with Paragraph (h) of this Rule.

(h) Committee review: An internal committee consisting of three members of the Department's clinical and administrative staff, including at least one psychologist and one psychiatrist shall review cases in which restraints were used beyond four hours. The incident will be reviewed and include consideration of the following:

- (1) the use of appropriate procedures in the decision to restrain;
- (2) sufficient indications for the use of restraint; and
- (3) release of the client from restraint as soon as clinically indicated based upon consideration of the factors listed in Paragraphs (a) and (b) of this Rule.

(i) When a client is placed in restraint, the client record shall contain documentation of the following:

- (1) the rationale and authorization for the use of restraint, including placement in restraint pending review by the responsible clinician;
- (2) a record of the observations of the client as required by Paragraph (g) of this Rule.
- (3) each review by the responsible clinician as required by this Rule, including a description of the client and all significant changes that have occurred; and
- (4) each review by the internal committee as required in Paragraph (h) of this Rule.

History Note: Authority G. S. 148-19(d);

*Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 26D .1204 PROTECTIVE DEVICES

Whenever protective devices are used for any client, the Chief of Psychiatry shall:

- (1) ensure that the:
 - (a) necessity for the protective device has been assessed and approved by a mental health professional;
 - (b) device is applied by a person who has been trained in the use of protective devices;
 - (c) client who is using protective devices which limits his or her freedom of movement is observed every two hours; and
 - (d) client is given the opportunity for toileting and exercising as needed.
- (2) document the use of protective devices in the client's medical record.

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 26D .1206 INVOLUNTARY REFERRALS AND TRANSFERS

(a) Involuntary referrals and transfers to residential or inpatient units shall occur only if the attending clinician determines that:

- (1) a client requires treatment services not available at his or her current service delivery site; and
- (2) a transfer over the client's objections is required.

(b) Non-emergency involuntary referrals:

- (1) If a qualified professional determines that the following conditions exist:
 - (A) a diagnosable mental disorder; and
 - (B) determination is made that outpatient services are not effective treatment for the client; and
- (2) the professional has given the client a written notice of a referral for transfer and has explained to the client his or her rights in accordance with Rule .1207 of this Section; then
- (3) the following steps shall be taken if the client does not voluntarily consent to the referral and transfer:
 - (A) the client shall be informed of the time, date and place of a hearing;
 - (B) the Chief of Psychiatry or his or her designee shall contact the hearing officer to arrange a hearing; and
 - (C) a client advisor shall be appointed and a hearing conducted in accordance with the procedures specified in this Rule.

(c) Emergency involuntary referrals:

- (1) Such referrals shall be implemented only:
 - (A) if a client has a diagnosable mental disorder; and either:
 - (i) presents a substantial risk of harm to himself or others, as manifested by recent overt acts or expressed threats of violence; or
 - (ii) is so unable to care for his or her own personal health and safety as to create a substantial risk of harm to himself; and
 - (B) the Chief of Psychiatry has made a determination that outpatient services are not effective treatment for the client's condition.
- (2) Such referrals shall be made by the mental health staff, the unit physician, nurse, or officer in charge after consultation with the designated mental health staff of the receiving unit.
- (3) The officer in charge shall authorize a transfer only under the following conditions and if the officer determines:
 - (A) the emergency referral criteria have been met; and
 - (B) efforts to contact the referring mental health professional have failed.

(d) A client who is transferred because he or she meets the criteria of an emergency involuntary referral shall be afforded a hearing at the receiving unit within 10 days of admission. This hearing will follow the same procedures as those required by Paragraph (b) of this Rule.

(e) Client advisors:

- (1) Each client referred for a hearing shall have an advisor appointed to assist him or her in preparing for the hearing.
- (2) Each area administrator or institution head shall be responsible for appointing advisors for all units within his or her jurisdiction.
- (3) Client advisors shall be free to advise the client independently and to act solely in his or her behalf, and shall not be subject to any harassment, discipline, or coercion in connection with such advice for the client.
- (4) Ex parte attempts to influence the decision of the hearing officer shall be prohibited.

(f) Hearing officers: The Chief of Psychiatry shall recommend and the Director of the Division of Prisons shall appoint persons to serve as hearing officers who shall:

- (1) be qualified professionals who are neutral and independent;
- (2) have the authority to refuse to transfer an client if they determine that such a transfer is not justified.
- (3) ensure and document that an client advisor has been assigned;

- (4) conduct a hearing that follows the procedures specified in this Rule in a fair and impartial manner; and
 - (5) determine from evidence presented whether the criteria for emergency or non-emergency referrals have been met.
- (g) Hearing procedures:
- (1) The hearing shall be conducted no sooner than 48 hours after the time the client is given written notice that he or she is being considered for a referral to a residential or inpatient unit; however, the client has the right to waive the 48-hour notice.
 - (2) The hearing officer shall determine the time, place, and site of the hearing.
 - (3) The hearing officer shall consider all relevant and non- repetitive evidence justifying or disputing the involuntary transfer and that:
 - (A) the client has a diagnosable mental disorder;
 - (B) the client requires services that are not currently available on an outpatient basis; and
 - (C) the unit to which the client is to be transferred is better able to provide the needed treatment or habilitation services than is the currently assigned housing unit.
 - (4) A copy of the referral form, as well as other relevant written documents, shall be entered as evidence.
 - (5) All written documents or verbal information are to be considered confidential, in accordance with applicable law and Department policy.
 - (6) The client shall not have direct access to his or her client record; however, the client advisor may:
 - (A) review the client's record presented at the hearing; and
 - (B) consult with the client about its use at the hearing and any other matters which could be relevant at the hearing, including the questioning of all witnesses.
 - (7) The client who is being considered for transfer or his or her advisor may question any witnesses for the State, including mental health or mental retardation professionals.
 - (8) The client may also present witnesses in his or her own behalf with limitations that include:
 - (A) a reasonable number of witnesses will be allowed at the discretion of the Hearing Officer;
 - (B) testimony may be received by conference telephone call if the hearing is conducted away from the client's assigned unit;
 - (C) written statements may be entered in lieu of direct testimony; and
 - (9) The hearing officer shall:
 - (A) document the results of the hearing, summarizing the evidence presented and the rationale for his or her decision;
 - (B) communicate the results of the hearing to the client and staff; and
 - (C) ensure that a copy of relevant documents is placed in the client record.
 - (10) The decision to transfer involuntarily shall be valid throughout the duration of the stay at any residential or inpatient unit. There shall be a review of the need for continued treatment or habilitation every 30 days.
 - (11) A client may be transferred to another like unit without a rehearing; however, if he or she is discharged from residential or inpatient services, a rehearing shall be required prior to readmission to that level of service.
 - (12) At the request of the client, his or her case shall be reviewed by a Hearing Officer within 90 days after the initial hearing to determine whether the assignment to the residential or inpatient unit will be extended or terminated. Subsequent reviews by a Hearing Officer shall take place each 180 days if requested by the client.
- (h) The receiving unit shall be responsible for notifying the client of his or her right to inform his or her family of the transfer, and such notice shall be provided within 24 hours of the admission to the receiving unit.

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
Readopted Eff. March 1, 2019.*

10A NCAC 67A .0301 REGIONAL DEPARTMENTS OF SOCIAL SERVICES FINANCIAL OBLIGATIONS OF COUNTIES

Counties creating or joining a regional social services department pursuant to G.S. 108A-15.7, shall enter into a written agreement that sets forth, at a minimum, the following financial obligations and the amount or method in which each county will appropriate funds to the regional social services department for:

- (1) the administration of programs of social services and public assistance;
- (2) the county share of public assistance program costs; and

- (3) any recoupments following fiscal or program monitoring or audit findings.

History Note: Authority G.S. 108A-15.7; 143B-153(9); Eff. March 1, 2019.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 23B .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be so filed until 11:59 p.m. on the required filing date.

History Note: Authority G.S. 143-291; 143-300; Eff. January 1, 1989; Amended Eff. July 1, 2014; May 1, 2000; Recodified from 04 NCAC 10B .0101 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms regarding tort claims may be obtained by contacting the Commission in person at the address in Rule .0101 of this Section; by written request mailed to 1236 Mail Service Center, Raleigh, NC 27699-1236, Attn.: Office of the Clerk; or from the Commission's website at <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

(b) The use of any printed forms other than those provided by the Commission is prohibited, except that parties may reproduce current Commission forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format to the Commission form.

History Note: Authority G.S. 143-300; Eff. January 1, 1989; Amended Eff. July 1, 2014; May 1, 2000; Recodified from 04 NCAC 10B .0102 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0103 FILING FEES

(a) No tort claim shall be accepted for filing with the Commission unless the claim is accompanied by an attorney's check, certified check, money order, or electronic transfer of funds in payment of

a filing fee in an amount equal to the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.

(b) The provisions of Paragraph (a) of this Rule notwithstanding, a tort claim that is accompanied by a Petition to Sue as an Indigent shall be accepted for filing upon the date of its receipt.

(c) A Petition to Sue as an Indigent shall consist of an affidavit sufficient to satisfy the provisions of G.S. 1-110, stating that plaintiff is unable to comply with Paragraph (a) of this Rule.

(d) If the Commission determines the plaintiff is able to pay the fee assessed under this Rule, an Order shall be issued directing payment of that fee, and the plaintiff shall, within 30 days from receipt of the Order, forward to the Commission an attorney's check, certified check, money order, or electronic transfer of funds for the full amount required to be paid. Failure to submit the required amount of the filing fee within this time shall result in the tort claim being dismissed without prejudice.

(e) Upon consideration of a prison inmate's Petition to Sue as an Indigent, the Commission shall determine whether the inmate's tort claim is frivolous and whether to dismiss the claim, pursuant to G.S. 1-110. Appeals from the dismissal of a frivolous tort claim pursuant to G.S. 1-110 shall proceed directly to the Full Commission and shall be decided without oral argument.

History Note: Authority G.S. 143-291.2; 143-300; Eff. January 1, 1989; Amended Eff. July 1, 2014; May 1, 2000; Recodified from 04 NCAC 10B .0103 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0104 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All filings to the Commission in tort claims shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Plaintiffs without legal representation may file all documents with the Office of the Clerk of the Commission via the Commission's Electronic Document Filing Portal (EDFP), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraph (c) of this Rule, all documents shall be transmitted to the Commission via EDPF. Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents required to be filed via EDPF shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDPF that are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.

(c) The tort claims forms and documents listed in Table 1 shall not be required to be transmitted via EDPF provided all applicable qualifying conditions are met.

Table 1: Forms and documents exempt from EDPF filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form T-1	No IC file number has been assigned	Hand delivery to the Industrial Commission's main office or by mail to 1236 Mail Service Center,

		Raleigh, North Carolina 27699-1236.
Form T-3	No IC file number has been assigned	Email to dockets@ic.nc.gov, hand delivery to the Industrial Commission's main office, or by mail to 1236 Mail Service Center, Raleigh, North Carolina; 27699-1236
Pre-affidavit motion under Rule 9(j)(3) of the Rules of Civil Procedure to extend the Statute of Limitations.	No IC file number has been assigned.	Hand delivery to the Industrial Commission's main office or by mail to 1236 Mail Service Center, Raleigh, North Carolina 27699-1236.

(d) A one-year waiver shall be granted to an attorney who notifies the Commission of the attorney's inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the attorney is unable to comply with the rule and outline the attorney's plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S. Mail. This Paragraph shall expire one year from the effective date of this Rule.

(e) Any party may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule if it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(f) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

History Note: Authority G.S. 143-291; 143-291.2; 143-297; 143-300;
Eff. May 1, 2000;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0104 Eff. June 1, 2018;
Amended Eff. March 1, 2019.

11 NCAC 23B .0105 CONTACT INFORMATION

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All persons or entities without legal representation who have matters pending before the Commission shall advise the Commission upon any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(c) A plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at the time of filing his or her tort claim, shall, within thirty (30) days of release, provide the Commission with written notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following the initial written notice of

post-release contact information, the previously incarcerated plaintiff shall continue to advise the Commission upon all changes in contact information in accordance with Paragraph (b) of this Rule.

(d) All attorneys of record with matters before the Commission shall inform the Commission in writing of any change in the attorney's or the represented party's contact information via email to dockets@ic.nc.gov.

History Note: Authority G.S. 143-291; 143-300;
Eff. March 1, 2019.

11 NCAC 23B .0202 MEDICAL MALPRACTICE CLAIMS BY UNREPRESENTED PRISON INMATES

In any tort claim filed by an unrepresented prison inmate in which the Commission determines that the plaintiff is alleging that a health care provider, as defined in G.S. 90-21.11, failed to comply with the applicable standard of care set forth in G.S. 90-21.12, or the defendant has moved to dismiss the claim for failure to comply with Rule 9(j) of the North Rules of Civil Procedure, all discovery shall be stayed until a recorded non-evidentiary hearing before the Commission is held for the purpose of determining whether a claim for medical malpractice has been stated and, if so, whether:

- (1) the plaintiff must meet the requirements of Rule 9(j)(1) or (2) of the North Carolina Rules of Civil Procedure to proceed with the claim; or
- (2) the plaintiff has alleged facts establishing negligence under the existing common-law doctrine of *res ipsa loquitur*.

If the Commission determines that a claim for medical malpractice has been stated and plaintiff must meet the requirements of Rule 9(j)(1) or (2) of the North Carolina Rules of Civil Procedure, the defendant shall produce medical records to the plaintiff within the time period ordered by the Commission. The plaintiff shall have one hundred and twenty (120) days following receipt of the medical records to comply with Rule 9(j) of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0206 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0202 Eff. June 1, 2018;
Amended Eff. March 1, 2019.

11 NCAC 23B .0203 INFANTS AND INCOMPETENTS

(a) Persons seeking to appear on behalf of an infant or incompetent in accordance with G.S. 1A-1, Rule 17 shall apply on a Form T-42 Application for Appointment of Guardian ad Litem. The Commission shall appoint a guardian ad litem if it is in the best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) The Commission may assess a fee to be paid to an attorney who serves as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs assessed pursuant to G.S. 143-291.2(a) or Rule 17(b)(2) of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-291; 143-295; 143-300; Eff. January 1, 1989; Recodified from 04 NCAC 10B .0307 Eff. April 17, 2000; Amended Eff. July 1, 2014; May 1, 2000; Recodified from 04 NCAC 10B .0203 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0204 MOTIONS

(a) All motions regarding tort claims shall be filed pursuant to Rule .0104 of this Subchapter.

(b) A motion shall state the grounds on which it is based with particularity, the relief sought, and the opposing party's position, or that the opposing party's position could not be ascertained after a good faith effort.

(c) At the same time a motion is filed, the party filing the motion shall provide a copy of the motion to all opposing attorneys of record or on all opposing parties if not represented.

(d) All motions and responses thereto filed electronically shall include a proposed Order in Microsoft Word format.

(e) By motion of the parties or on its own motion, the Commission may enlarge the time for an act required or allowed to be done under the Rules in this Subchapter in the interests of justice or to promote judicial economy. An enlargement of time may be granted either before or after the relevant time requirement has elapsed.

(f) Motions to continue or remove a case from the hearing docket shall be made as much in advance of the scheduled hearing as possible and shall be made in writing. The moving party shall state that the other parties have been advised of the motion and shall state the position of the other parties regarding the motion. Oral motions shall be permitted in emergency situations.

(g) The responding party to a motion, with the exception of motions to continue or to remove a case from a hearing docket, has 10 days after a motion is served during which to file and serve copies of a response in opposition to the motion.

(h) Notwithstanding Paragraph (g) of this Rule, a motion may be acted upon at any time by the Commission, despite the absence of notice to all parties and without awaiting a response. Motions shall be determined without oral argument, unless the Commission orders otherwise in the interests of justice.

(i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to name the individual officer, agent, employee, or involuntary servant whose alleged negligence gave rise to the claim, or has failed to properly

name the department or agency of the State with whom such person was employed, shall be ruled upon following the completion of discovery.

(j) Motions to reconsider or amend an Order or Decision and Order, made prior to giving notice of appeal to the Full Commission, shall be addressed to the Deputy Commissioner who authored the Order or Decision and Order.

History Note: Authority G.S. 143-296; 143-300; Eff. January 1, 1989; Recodified from 04 NCAC 10B .0203 Eff. April 17, 2000; Amended Eff. July 1, 2014; May 1, 2000; Recodified from 04 NCAC 10B .0204 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0205 MEDIATION

(a) Any party participating in mediation shall be bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission, found in 11 NCAC 23G, except to the extent these Rules conflict with the Tort Claims Act or the other rules in this Subchapter, in which case the Tort Claims Act and the other rules in this Subchapter shall apply.

(b) An employee or agent of the named governmental entity or agency shall either physically attend or be available via telecommunication. Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.

History Note: Authority G.S. 143-295; 143-296; 143-300; Eff. January 1, 1989; Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000; Recodified from 04 NCAC 10B .0205 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0208 HEARING COSTS

Costs assessed pursuant to Rule 11 NCAC 23E .0202 in tort claims shall be due upon receipt of a bill or statement from the Commission.

History Note: Authority G.S. 7A-305; 143-291.1; 143-291.2; 143-300; Eff. July 1, 2014; Recodified from 04 NCAC 10B .0208 Eff. June 1, 2018; Amended Eff. March 1, 2019.

11 NCAC 23B .0302 APPEALS TO THE FULL COMMISSION

(a) Notice of appeal shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Order or Decision and Order has been received by the appellant. The notice of appeal shall specify, by tort claim number and filing date, the Order or Decision and Order from which appeal is taken. The notice of appeal shall include a written statement confirming that a copy of the notice of appeal has been sent to the opposing party or parties.

(b) After receipt of the notice of appeal, the Commission shall acknowledge the notice of appeal in writing. Within 30 days of the acknowledgement, the Commission shall prepare and provide, at no charge to the parties, electronic copies of any official

transcript, any exhibits, and a Form T-44 Application for Review. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the official transcript, all exhibits, and a Form T-44 Application for Review via any class of U.S. mail that is fully prepaid.

(c) Within 25 days of receipt of the official transcript and exhibits or receipt of notice that there will be no official transcript and exhibits, the appellant shall submit a Form T-44 Application for Review or written statement stating with particularity all assignments of error and grounds for review, including, where applicable, the pages in the transcript or the record on which the alleged errors are recorded. The Form T-44 Application for Review or the written statement shall be accompanied by confirmation that a copy of the document has been sent to the opposing party or parties. Failure to state the proposed issues on appeal, either by Form T-44 Application for Review or by written statement, shall be grounds for dismissal of the appeal either upon the motion of the non-appealing party or upon the Full Commission's own motion.

(d) An appellant may file a brief in support of the grounds for appeal with the Commission, with a written statement confirming that a copy of the brief has been sent to the opposing party or parties, within 25 days after receipt of the official transcript and exhibits or receipt of notice that there will be no official transcript and exhibits. The appellee shall have 25 days from service of the appellant's brief to file a reply brief with the Commission with a written statement confirming that a copy of the brief has been sent to the opposing party or parties. If the appellant fails to file a brief, the appellee shall file a brief within 25 days after the appellant's time for filing a brief has expired. If multiple parties appeal, each party may file an appellant's brief and appellee's brief on the schedule set forth in this Rule. If the matter has not been calendared for hearing, any party may file a written stipulation to a single extension of time not to exceed 15 days with the Office of the Clerk. The cumulative extensions of time shall not exceed 30 days. A party who fails to file a brief shall not be allowed oral argument before the Full Commission.

(e) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Typed briefs shall be prepared using 12-point proportional type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. If a party quotes or paraphrases testimony or evidence from the official transcript or exhibits in a brief, the party shall include, at the end of the sentence, a parenthetical entry that designates the source and page number of the quoted or paraphrased material. The party shall use "T" for transcript and "Ex" for exhibit. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T 11)," and (2) if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format "(Ex 12)". If a party quotes or paraphrases testimony or other evidence in the transcript of a deposition, the party shall include, at the end of the sentence, a parenthetical entry that contains the name of the person deposed and the page number in the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John Smith located on page 11 of the transcript of the deposition, the

party shall use the following format "(Smith 11)". Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter and, if possible, to the South Eastern Reporter. Briefs shall be based upon the record in the matter, pursuant to G.S. 143-292.

(g) A request for review by the Full Commission of an order by a Commissioner or Deputy Commissioner made during the pendency of a case assigned to them shall be filed with the Office of the Clerk. If the order made by the authoring Commissioner or Deputy Commissioner is a final judgment as to one or more issues or parties and the order contains a certification that there is no just reason for delay, the request for review shall be referred directly to a panel of the Full Commission. If the order contains no certification, requests for review shall be referred to the Chair of the Commission for a determination regarding the right to immediate review, and the parties shall address the grounds upon which immediate review shall be allowed.

History Note: Authority G.S. 143-292; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0302 Eff. June 1, 2018;
Amended Eff. March 1, 2019.

11 NCAC 23B .0303 PROPOSED ISSUES ON APPEAL

History Note: Authority G.S. 143-292; 143-300; 362 N.C. 191 (2008);
Eff. January 1, 1989;
Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000;
Recodified from 04 NCAC 10B .0303 Eff. June 1, 2018;
Repealed Eff. March 1, 2019.

11 NCAC 23B .0305 BRIEFS TO THE FULL COMMISSION

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0306 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0305 Eff. June 1, 2018;
Repealed Eff. March 1, 2019.

11 NCAC 23B .0307 MOTIONS BEFORE THE FULL COMMISSION

(a) After notice of appeal has been given to the Full Commission, all motions related to the claim before the Full Commission shall be in writing and filed with the Full Commission with a statement confirming that copies have been provided to the other parties. A Motion for a New Hearing shall be supported by an Affidavit.

(b) Motions related to the issues on appeal, including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0308 effective April 17, 2000;

*Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0307 Eff. June 1, 2018;
Amended Eff. March 1, 2019.*

11 NCAC 23B .0308 STAYS

If a case is appealed to the Full Commission, all Orders or Decision and Orders of a Deputy Commissioner shall be stayed pending appeal.

*History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. May 1, 2000;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0308 Eff. June 1, 2018;
Amended Eff. March 1, 2019.*

11 NCAC 23B .0310 ORAL ARGUMENT

(a) A party may waive oral argument at any time with approval of the Commission. Upon the request of a party or on its own initiative, the Commission may review the case and file an Order or Decision and Order without oral argument.

(b) When presenting oral argument, each appellant shall have 20 minutes to present oral argument and may reserve any amount of the 20-minute total allotment for rebuttal, unless otherwise specified by Order of the Commission. Each appellee shall also have 20 minutes to present oral argument, unless otherwise specified by Order of the Commission; however, the appellees shall not reserve rebuttal time. In cross-appeals, each appealing party may reserve rebuttal time.

(c) A party may request additional time to present oral argument in excess of the standard 20-minute allowance. Such requests shall be made in writing and submitted to the Full Commission no less than 10 days prior to the scheduled hearing date. The written request for additional time shall state with specificity the reasons for the request of additional time and the amount of additional time requested.

(d) If a party fails to appear before the Full Commission upon the call of the case, the Commission may, upon consideration of the interests of justice and judicial economy, disallow the party's right to present oral argument. If neither party appears upon the call of the case, the Full Commission may, upon consideration of the interests of justice and judicial economy, decide the case upon the record and briefs on appeal, unless otherwise ordered.

(e) Oral arguments shall be based upon the record in the matter, pursuant to G.S. 143-292.

11 NCAC 23L .0105 FORM T-42 – APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM

(a) Persons seeking to appear on behalf of an infant or incompetent shall apply on a Form T-42, Application for Appointment of Guardian Ad Litem, in accordance with Rule 11 NCAC 23B .0203. The Form T-42, Application for Appointment of Guardian Ad Litem, shall read as follows:

North Carolina Industrial Commission
IC File # T- _____

Application for Appointment of Guardian Ad Litem

The use of this Form is required under Rule 11 NCAC 23B .0203

_____ Plaintiff(s) v. _____ Defendant(s)

To the North Carolina Industrial Commission:

*History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0311 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0310 Eff. June 1, 2018;
Amended Eff. March 1, 2019.*

11 NCAC 23B .0402 STAYS

If a case is appealed to the Court of Appeals, all Orders or Decision and Orders of the Full Commission shall be stayed pending appeal.

*History Note: Authority G.S. 143-292; 143-294; 143-296;
143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0402 Eff. June 1, 2018;
Amended Eff. March 1, 2019.*

11 NCAC 23B .0501 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon request of a party or upon its own initiative only if the plaintiff is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

*History Note: Authority G.S. 143-291; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0501 Eff. June 1, 2018;
Amended Eff. March 1, 2019.*

The undersigned _____ respectfully shows unto the North Carolina Industrial Commission that _____ is an ___ infant or ___ incompetent without general or testamentary guardian in this State, and that by reason thereof can bring an action only by a guardian ad litem; that the infant or incompetent has a cause of action against the defendants on account of the following matter and things:

The undersigned is a reputable person closely connected with the infant or incompetent having the relationship with the infant or incompetent as follows: _____

Wherefore, the undersigned prays the Commission that a fit and proper person be appointed Guardian Ad Litem for the infant or incompetent for the purpose of bringing on his or her behalf an action as above set out.

Signature of Applicant _____ Date _____

(Please complete page 2 of form)

Order Appointing Guardian Ad Litem

It appearing to the North Carolina Industrial Commission from the above application that _____ is an ___ infant or ___ incompetent having no general or testamentary guardian within this State and that said infant or incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the Commission after due inquiry that _____ is a fit and proper person to be appointed guardian ad litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;

It is therefore ordered that _____ be and is hereby appointed guardian ad litem of _____ to bring action on his or her behalf.

This _____ day of _____.

Commissioner or Deputy Commissioner _____

Please type or print:

Full name and address of minor or incompetent:

Birth date of minor: _____

Full name and address of proposed guardian ad litem:

Important Information for Parties

Parties should take notice of the provisions set forth in Rule 11 NCAC 23B .0203.

11 NCAC 23B .0203 INFANTS AND INCOMPETENTS

(a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall apply on a Form T-42 Application for Appointment of Guardian ad Litem. The Commission shall appoint a fit and proper person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) The Commission may assess a fee to be paid to an attorney who serves as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.

SEND TO:

dockets@ic.nc.gov

Office of the Clerk

1236 Mail Service Center

Raleigh, NC 27699-1236

Main telephone: (919) 807-2500

Helpline (800) 688-8349

Website: <http://www.ic.nc.gov>

FORM T-42

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/formt42.pdf>. The form shall be reproduced only in the format available at <http://www.ic.nc.gov/forms/formt42.pdf> and shall not be altered or amended in any way.

History Note: Authority G.S. 143-291; 143-295; 143-300;
Eff. March 1, 2019.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 05B .0101 PURPOSE

The rules of this Chapter, pursuant to the authority of the Secretary of the Department of Public Safety (Department), implement the administration of duties of the Governor's Crime Commission (Commission), as a section of the Division of Administration within the Department and as a State administering agency of North Carolina. Applications for State and federal grants shall be submitted in accordance with the rules set forth in Section .0200 of this Chapter.

History Note: Authority G.S. 143B-602(5); 143B-1101(8); 143B-1103; 143B-1104;
Eff. March 1, 2019.

14B NCAC 05B .0201 APPLICATIONS FOR GRANTS

(a) The Executive Director of the Commission shall designate requirements for submission of grant applications. The grant application period shall begin on November 1 of each year and end on January 31. Funding priorities, as determined by the Commission, shall be listed on the Commission's website prior to the opening of an application period.

(b) Grant application submission dates shall be announced on the Commission website, <https://www.ncdps.gov/about-dps/boards-commissions/governors-crime-commission/grants-planning/grants> not less than 90 days before the application is due.

(c) Grant applications shall be electronically submitted to the Commission through the Grants Enterprise Management System (GEMS) on or before the date announced on the Commission website.

(d) To be considered for funding, applicants shall complete the grant application, which shall include the following information:

- (1) names, mailing addresses, telephone numbers, and signatures of the applicant;
- (2) project information, including the following:
 - (A) a description of the project, its goals and objectives, and outcomes;
 - (B) the issues or problems addressed by the project;
 - (C) project operation and activities; and
 - (D) a sustainability plan;
- (3) a proposed budget;
- (4) a project time line;
- (5) an explanation of how the project's results will be monitored and evaluated;
- (6) any other information required by these Rules or requested by the Section in order to make a decision on the grant proposal; and
- (7) a description of how the objectives of the proposed project are consistent with the outcomes and guidelines set forth in a State or federal grant program.

(e) Applicants seeking funding for a two-year project shall submit the information required by Paragraph (d) with the requirements

of Part (d)(2)(A), Part (d)(2)(C), and Subparagraph (d)(5) written to address the two-year grant period. Applicants shall also submit two one-year budgets.

History Note: Authority G.S. 143B-1103; 143B-1104;
Eff. March 1, 2019.

14B NCAC 05B .0202 REVIEW OF PROPOSALS

(a) Applications that contain all of the information required in Rule .0201 of this Section shall be forwarded to a Commission Subcommittee, as designated in G.S. 143B-1102.

(b) The Subcommittee shall review and evaluate each application and make a recommendation to the full Commission to approve or deny the application.

(c) In making this evaluation, the Commission or Subcommittee shall consider:

- (1) who will benefit from the grant;
- (2) how many will benefit from the grant;
- (3) the cost of administering the grant;
- (4) geographical representation; and
- (5) past performance of the applicant with grants and publicly funded projects.

(d) The Commission shall determine which applications are eligible for funding.

(e) The Commission shall recommend eligible applications to the Secretary of the Department of Public Safety. The Secretary shall select the applicants who will be awarded funding.

History Note: Authority G.S. 143B-1101(a)(8); 143B-1103; 143B-1104;
Eff. March 1, 2019.

14B NCAC 05B .0203 ADMINISTRATION OF GRANTS

(a) The Commission staff shall administer grants as funds are available. All applicants shall be notified in writing or electronic communication through the GEMS system upon completion of the selection process that the application has been approved or denied.

(b) Within 30 days of receipt of award notification, the applicant shall submit the grant compliance and modification information. An applicant may request an extension of no more than 60 days to submit the information. An applicant who does not provide the required information shall be ineligible for grant funding. For the purposes of this Rule, grant compliance and modification information includes the following:

- (1) a list of grant conditions that were agreed to by an authorizing official of the applicant;
- (2) a certification of non-supplanting;
- (3) a certification of filing of an equal employment opportunity program;
- (4) a memorandum of agreement or contract with any cooperating government agencies;
- (5) an original signature of all authorizing officials, implementing project director, and the applicant's chief financial officer; and

- (6) a signed agreement to submit to an annual audit of the program.

(c) Funds shall be conveyed to grantees through Grant Award Contracts. The Grant Award Contract shall bear the original signature of the grantee's authorizing official and the Executive Director of the Commission. The Grant Award Contract shall be signed and returned to the Department within 30 days.

(d) The grant period for the project shall be for a period of up to two years. The grant period shall coincide with the start and close of the federal fiscal year, if possible.

(e) Requests for adjustments to approved applications may be made at any time up to 90 days before the project's scheduled termination date. These requests shall be made through the GEMS system, providing an explanation for proposed amendments.

History Note: Authority G.S. 143B-602(8); 143B-1103; 143B-1104; Eff. March 1, 2019.

14B NCAC 05B .0301 GRANT TERMINATION OR SUSPENSION

(a) A grant may be terminated or the funds may be suspended by the Executive Director of the Commission when the applicant or grantee is not in compliance with any of the following:

- (1) the terms and conditions of the grant application;
- (2) the terms and conditions of the grant award contract;
- (3) the guidelines promulgated by the federal criminal justice block grant program or approved plan; or
- (4) the rules set forth in this Chapter.

The determination of action by the Executive Director shall be made a case-by-case basis, considering the terms of the grant award contract, including conditions of the grant and factors of non-compliance.

(b) The Executive Director shall notify the grantee of its noncompliance in writing. The notification shall identify the penalty to be taken or allow the grantee an additional period of not more than 30 days to correct the deficiencies. If the deficiencies are not corrected, then the Executive Director may suspend the payment of funds to the grantee or terminate the grant, as set forth in the conditions of the grant award contract.

History Note: Authority G.S. 143B-602(8)(c); 143B-1103(b)(3); 143B-1104; Eff. March 1, 2019.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02B .0620 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PURPOSE

Rules .0620 through .0624 of this Section set forth the minimum statewide water supply watershed protection requirements applicable to each Water Supply classification, as provided in 15A NCAC 02B .0212 through .0218.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. March 1, 2019.

15A NCAC 02B .0621 WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS

In addition to the definitions set forth in G.S. 143-214.7, the following definitions shall apply to Rules .0622 - .0624.

- (1) "Balance of Watershed" or "-BW" means the area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.
- (2) "Cluster development" has the same meaning as in 15A NCAC 02B .0202.
- (3) "Commission" has the same meaning as in 15A NCAC 02H .1002.
- (4) "Common plan of development" has the same meaning as in 15A NCAC 02H .1002.
- (5) "Critical area" has the same meaning as in 15A NCAC 02B .0202.
- (6) "Curb Outlet System" has the same meaning as in 15A NCAC 02H .1002.
- (7) "Dispersed flow" has the same meaning as in 15A NCAC 02H .1002.
- (8) "Division" has the same meaning as in 15A NCAC 02H .1002.
- (9) "Erosion and Sedimentation Control Plan" has the same meaning as in 15A NCAC 02H .1002.
- (10) "Existing development" has the same meaning as in 15A NCAC 02H .1002.
- (11) "Family subdivision" has the same meaning as in 15A NCAC 02B .0202.
- (12) "Geotextile fabric" has the same meaning as in 15A NCAC 02H .1002.
- (13) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0610.
- (14) "Major variance" has the same meaning as in 15A NCAC 02B .0202.
- (15) "Minimum Design Criteria" or "MDC" has the same meaning as in 15A NCAC 02H .1002.
- (16) "Minor variance" has the same meaning as in 15A NCAC 02B .0202.
- (17) "Nonconforming lot of record" has the same meaning as in 15A NCAC 02B .0202.
- (18) "NPDES" has the same meaning as in 15A NCAC 02H .1002.
- (19) "Perennial stream" has the same meaning as in 15A NCAC 02B .0610.
- (20) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0610.
- (21) "Primary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (22) "Project" has the same meaning as in 15A NCAC 02H .1002.
- (23) "Protected area" has the same meaning as in 15A NCAC 02B .0202.

- (24) "Required storm depth" has the same meaning as in 15A NCAC 02H .1002.
- (25) "Runoff treatment" has the same meaning as in 15A NCAC 02H .1002.
- (26) "Runoff volume match" has the same meaning as in 15A NCAC 02H .1002.
- (27) "Secondary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (28) "Stormwater Control Measure" or "SCM" has the same meaning as in 15A NCAC 02H .1002.
- (29) "Vegetated setback" has the same meaning as in 15A NCAC 02H .1002.
- (30) "Vegetated conveyance" has the same meaning as in 15A NCAC 02H .1002.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. March 1, 2019.

15A NCAC 02B .0622 WATER SUPPLY WATERSHED PROTECTION PROGRAM: EXCLUSIONS AND SPECIAL CASES

This Rule describes exclusions from the water supply watershed program and special case projects in the water supply watershed program.

- (1) EXCLUSIONS. The following project types shall be excluded from the requirements of Rules .0620-.0624 of this Section:
 - (a) existing development;
 - (b) redevelopment;
 - (c) single-family residential redevelopment, even if there is a net increase in built-upon area or if stormwater controls are not equal to that of the previous single-family residential development;
 - (d) expansions to single-family residential existing development, unless the expansion is part of a larger common plan of development that is subject to this Rule;
 - (e) nonconforming lot of record that is not contiguous to any other lot owned by the same party and if it is to be developed for single-family residential purposes. However, local governments may require the combination of contiguous nonconforming lots of record owned by the same party in order to establish a lot or lots that meet the development restrictions of Rule .0624 of this Section;
 - (f) any lot or parcel created as part of a family subdivision after the effective date of the local watershed ordinance if it is to be developed for one single-family detached residence and if it is

- exempt from a local subdivision ordinance;
- (g) activities of the North Carolina Department of Transportation (NCDOT) that are regulated in accordance with the provisions of NPDES Permit Number NCS000250;
- (h) linear transportation projects undertaken by an entity other than NCDOT when:

- (i) the project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) which is here in incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf;
 - (ii) upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
 - (iii) the project is not part of a common plan of development.
- (i) airport facilities that are deemed permitted in accordance with G.S. 143.214.7(c4).

- (2) SPECIAL CASES. In lieu of the requirements set forth in Rules .0620-.0624 of this Section, the following shall apply:

- (a) Silviculture activities shall comply with the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C, herein incorporated by reference with subsequent amendments and editions and available at no cost at <http://www.ncoah.com/rules/>) and other applicable forestry water quality standards as determined by the North Carolina Forest Service.
- (b) Agricultural activities within WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds shall be subject to the vegetated setback requirements set forth in Rule .0624(11) of this Section.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104).

15A NCAC 02B .0623 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PROGRAM ADMINISTRATION

This Rule contains provisions for the administration of water supply watershed protection programs.

- (1) **LOCAL GOVERNMENTS INCLUDED.** All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances and watershed maps that meet or exceed the requirements of G.S. 143-214.5 and Rules .0621 through .0624 of this Section. Local governments may use the Commission's model Watershed Protection Ordinance available at no cost at <http://watersupplywatershed.nc.gov> as the basis for their ordinance, or may propose an alternative ordinance that meets or exceeds the requirements of Rules .0621 through .0624 of this Section.
- (2) **COMMISSION APPROVAL.** Local government water supply watershed protection ordinances and watershed maps shall be submitted to the Division for approval by the Commission or its designee no later than 270 days after receiving notice of a water supply reclassification from the Commission. The Commission or its designee shall approve the water supply watershed protection ordinance and map if it meets or exceeds the minimum statewide water supply watershed management requirements adopted pursuant to Rules .0621 through .0624 of this Section and G.S. 143-214.5. The local government may begin implementing the ordinances prior to receiving approval by the Commission. The following items shall be included in the submission in either paper or electronic format:
 - (a) one copy of the adopted and effective relevant ordinance;
 - (b) a cover letter from the local government's legal counsel, municipal or county clerk, or municipal or county manager certifying that the ordinance meets or exceeds the requirements of this Section and G.S. 143-214.5; and
 - (c) one copy of a watershed map showing the local government corporate and extraterritorial jurisdictional boundaries, the Commission's adopted watershed boundaries, the local government's interpreted watershed boundaries, and U.S. Geological Survey 1:24,000 (7.5 minute) scale

topographic contour lines and hydrography.

- (3) **WATERSHED BOUNDARY INTERPRETATION.** Major landmarks, such as highways or property lines, may be used to delineate the outer boundary of the critical areas, balance of watershed areas, and protected areas if these landmarks are adjacent to the outer boundary of the critical areas, the balance of watershed areas, or the protected areas as specified in 15A NCAC 02B .0202. Local governments may extend the critical, balance of watershed, and protected area boundaries beyond the minimum distance required; however, these extended local boundaries shall not affect administration of state permits unless the boundaries are also adopted by the Commission. Local governments shall delineate the approximate normal pool elevation for backwaters of water supply reservoirs for the purposes of determining the critical and protected area boundaries as appropriate. Local governments shall rely on U.S. Geological Survey topographic maps, land surveys conducted by licensed surveyors, Lidar data, or information from the U.S. Army Corps of Engineers in approximating the location of backwaters.
- (4) **REVISIONS TO ORDINANCES AND MAPS.** Revisions to local watershed supply watershed protection ordinances and watershed maps shall be submitted to the Commission or its designee for approval. The submission requirements set forth in Item (2) of this Rule shall apply to all subject revisions. In addition, revisions to ordinances shall be submitted in a format that identifies the changes adopted or being proposed, as applicable. The local government may adopt and begin implementing the revised ordinance prior to receiving approval by the Commission or its designee; except, revisions regarding expansions or deletions to watershed maps shall be approved by the Commission or its designee prior to local government adoption.
- (5) **VARIANCES.** For all proposed major and minor variances, as those terms are defined in Rule .0621, from the minimum statewide watershed protection rules, the local Watershed Review Board, or equivalent quasi-judicial body shall make findings of fact in accordance with the procedures of G.S. 160A-393, as appropriate, showing that:
 - (a) there are difficulties or hardships that prevent compliance with the ordinance;
 - (b) the variance is in accordance with the general purpose and intent of the local watershed protection ordinance; and

- (c) granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of Rules .0621-.0624 of this Section and that the stormwater controls will function in perpetuity.

For all proposed major and minor variances, the local government considering or requesting the variance shall notify and allow a comment period for all other local governments having jurisdiction within the watershed area governed by these Rules and the entity using the water supply for consumption. The local Watershed Review Board, or equivalent local quasi-judicial body, hereafter referred to as "the Board," may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. The Board may authorize minor variances for development activities on a case-by-case basis. For major variances, if the Board decides in favor of granting the major variance, then it shall prepare a preliminary record of the hearing and submit it to the Commission for review. If the Commission approves the major variance or approves the variance with conditions or stipulations added, then the Commission shall prepare a decision that authorizes the Board to issue a final decision that includes any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the Board. The Board shall prepare a final decision denying the major variance. Appeals from the local government decision on a major or minor variance request shall be made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. When local ordinances are more stringent than the state's minimum watershed protection requirements, a variance to the local government's ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum watershed protection requirements.

- (6) **RECORDKEEPING REQUIREMENTS.** Local governments shall maintain the following records and furnish a copy of these records to the Division upon request:
 - (a) a copy of all variance requests and associated documents;
 - (b) findings of fact on all variance requests;
 - (c) a description of all projects for which the local government has granted a variance to the requirements of Rules .0621-.0624 of this Section;

- (d) an accounting of projects approved under the local government's 10/70 Option (as described in Rule .0624 of this Section), as applicable; and
- (e) records of inspections of SCMs pursuant to Item (7) of this Rule.

- (7) **OPERATION AND MAINTENANCE OF SCMS.** Wherever in this Section it is provided that local governments assume responsibility for operation and maintenance of engineered SCMs, this shall be construed to require responsible local governments to either inspect such SCMs or require the owners of such SCMs to inspect such SCMs at least once per year to determine whether the SCMs are performing as designed and intended. Records of inspections shall be maintained on forms made available by the Division at <http://watersupplywatershed.nc.gov/> or the local government. The inspection form shall include the following:

- (a) project name;
- (b) owner name and address;
- (c) name and classification of the water supply watershed where the project is located;
- (d) type(s) of SCMs at the project site;
- (e) summary of repairs or maintenance needed; and
- (f) estimated timeframe for completion of the repairs or maintenance.

In the event an inspection shows that an SCM is not performing as designed and intended, the local government shall order the owning entity to take corrective actions. If the entity fails to take corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with State and local law, including without limitation: G.S. 14-4; G.S. 77-13; G.S. 77-14; G.S. 143-214.7; G.S. 143-215.6A; G.S. 153A-123; G.S. 160A-459; and G.S. 160A-175.

- (8) **ENFORCEMENT.** In the event that the Commission determines that a local government program has failed to adopt or implement its program in compliance with the water supply watershed protection requirements of this Section and G.S. 143-214.5, the Commission shall take appropriate enforcement action in accordance with G.S. 143-214.5 and G.S. 143-215.6A(e). When the Commission assumes a local water supply watershed protection program as specified under G.S. 143-214.5(e), all local permits authorizing construction and development activities as regulated by the statewide minimum water supply watershed protection requirements of this Section shall be approved

- (9) by the Commission or its designee prior to local government issuance.
DELEGATION. The Commission may delegate such matters as variance approval, extension of deadlines for submission of ordinances, and assessment of civil penalties pursuant to G.S. 143-214.5(e) to the Director.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);
 Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104).*

15A NCAC 02B .0624 WATER SUPPLY WATERSHED PROTECTION PROGRAM: NONPOINT SOURCE AND STORMWATER POLLUTION CONTROL

This Rule sets forth requirements for projects that are subject to water supply watershed regulations.

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by local governments with land use authority in one or more designated water supply watersheds. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Section.
- (2) **APPLICABILITY.** This Rule shall apply to all new development projects, including state owned projects, that lie within a designated water supply watershed, except in a Class WS-IV watershed where this Rule applies only to new development projects that require an Erosion and Sedimentation Control Plan. Rule .0622 of this Section includes project types to which rules do not apply.

- (3) **PROJECT DENSITY.** The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
		Low Density Development		High Density Development
		Single-family detached residential	Non-residential and all other residential	All types
WS-I	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
WS-II	Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-III	Critical Area	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
	Balance of Watershed	1 dwelling unit per one-half acre or 20,000 square foot lot excluding	24% built-upon area	24 to 50% built-upon area

		roadway right-of-way or 24% built-upon area		
WS-IV	Critical Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dwelling units per acre or 36% built-upon area without curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area
WS-V	Not Applicable			

(4) **CALCULATION OF PROJECT DENSITY.**

The following requirements shall apply to the calculation of project density:

- (a) Project density shall be calculated as the total built-upon area divided by the total project area;
- (b) A project with "existing development," as that term is defined in Rule .0621 of this Section, may use the calculation method in Sub-Item (a) of this Item or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area. Expansions to existing development shall be subject to this Rule except as excluded in Sub-Item (3)(d) of this Rule. Where there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule;
- (c) Total project area shall exclude the following:
 - (i) areas below the Normal High Water Line (NHWL); and
 - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions,

and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL; and

- (d) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:
 - (i) natural drainage area boundaries;
 - (ii) variations in land use throughout the project; or
 - (iii) construction phasing.

(5) **LOW DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (3) of this Rule, low density projects shall comply with the following:

- (a) **VEGETATED CONVEYANCES.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that

they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:

- (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
 - (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.
- (b) **CURB OUTLET SYSTEMS.** In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
- (i) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
 - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (iii) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
 - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (vi) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in

Sub-Items (i) through (v) of this Sub-Item.

- (6) **HIGH DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (3) of this Rule, high density projects shall comply with the following:
 - (a) SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .0621 of this Section;
 - (b) For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;
 - (c) Stormwater runoff from off-site areas and "existing development," as that term is defined in Rule .0621 of this Section, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
 - (d) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062; and
 - (e) Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (7) **OPTIONS FOR IMPLEMENTING PROJECT DENSITY.** Local governments shall have the following options when developing or revising their ordinances in place of or in addition to the requirements of Item (3) of this Rule, as appropriate:
 - (a) Local governments may allow only low density development in their water supply watershed areas in accordance with this Section.
 - (b) Local governments may regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.
 - (c) **10/70 OPTION.** Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, local governments may regulate new development under the

"10/70 option" in accordance with the following requirements:

- (i) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within a local government's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.
- (ii) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;
- (iii) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (5) of this Rule unless the local government allows high density development, in which case the local government may require these projects to comply with the high density requirements set forth in Item (6) of this Rule;
- (iv) The maximum built-upon area allowed on any given new development project shall be 70 percent;
- (v) A local government having jurisdiction within a designated water supply watershed may transfer, in whole or in part, its right to the 10/70 land area to another local government within the

same water supply watershed upon submittal of a joint resolution and approval by the Commission; and

- (vi) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.
- (d) New development shall meet the development requirements on a project-by-project basis except local governments may submit ordinances that use density or built-upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project-by-project basis within the watershed. Prior to approval of the ordinance, the local government shall demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements and that a mechanism exists to ensure the planned distribution of development potential throughout the local government's jurisdiction within the watershed.
- (e) Local governments may administer oversight of future development activities in single-family detached residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from all pervious and built-upon surfaces shown on the development plan and any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.
- (8) **CLUSTER DEVELOPMENT.** Cluster development shall be allowed on a project-by-project basis as follows:
 - (a) Overall density of the project shall meet the requirements of Item (3) of this Rule;
 - (b) Vegetated setbacks shall meet the requirements of Item (11) of this Rule;
 - (c) Built-upon areas are designed and located to minimize stormwater runoff impact to receiving waters, minimize

- concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
- (d) Areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways. In determining whether these criteria have been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality;
- (e) The remainder of tract shall remain in a vegetated or natural state;
- (f) The area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;
- (g) A maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (h) Cluster development that meets the applicable low density requirements shall comply with Item (5) of this Rule.
- (9) **DENSITY AVERAGING OF NONCONTIGUOUS PARCELS.** Density averaging of two noncontiguous parcels for purposes of complying with this Rule shall be allowed in accordance with G.S. 143-214.5 (d2).
- (10) **RESPONSIBILITY FOR SCM OPERATION & MAINTENANCE.** Operation and maintenance agreements and plans are required for SCMs in accordance with 15A NCAC 02H .1050. Local governments that allow high density development shall assume responsibility for operation and maintenance of the SCMs that they approve.
- (11) **VEGETATED SETBACKS.** Vegetated setbacks shall be required along perennial waterbodies and perennial streams that are indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or other maps developed by the Department or a local government and approved by the Commission. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. A qualified individual is one who has been certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) Course offered by the North Carolina Division of Water Resources and North Carolina State University. Vegetated setbacks shall also be in accordance with the following:
- (a) **MINIMUM VEGETATION WIDTHS.** The following minimum widths shall apply:
- (i) low density projects – 30 feet;
- (ii) high density projects – 100 feet;
- (iii) projects covered under the 10/70 option – 100 feet; and
- (iv) agricultural activities – 10 feet, or equivalent control as determined by the designated agency as set forth in Rule .0622 of this Section; and
- (b) The width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
- (c) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;
- (d) No new built-upon area shall be allowed in the vegetated setback except for the following uses where it is not practical to locate the built-upon area elsewhere:
- (i) publicly-funded linear projects such as roads, greenways, and sidewalks;
- (ii) water dependent structures such as docks; and
- (iii) minimal footprint uses such as poles, signs, utility appurtenances, and security lights.
Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided; and
- (e) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.

- (f) For minor variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.
- (g) Non-family subdivisions that are exempt from local subdivision ordinances shall implement the requirements of this Item to the maximum extent practicable considering site-specific factors including technical and cost consideration as well as protection of water quality.
- (12) **VARIANCES.** Variances to this Rule may be considered in accordance with Rule .0623 of this Section.
- (4) septage from wastewater treatment facilities;
- (5) ash that is regulated in accordance with Section .1200 of this Subchapter;
- (6) residuals that are regulated in accordance with Section .1100 of this Subchapter;
- (7) residuals that are prepared for land application, used, or disposed of in a solid waste management facility permitted by the Division of Waste Management;
- (8) residuals that are disposed of in an incinerator permitted by the Division of Air Quality;
- (9) residuals that are transported out of state for treatment, storage, use, or disposal;
- (10) residuals that meet the definition of a hazardous waste in accordance with 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b) or that have a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids on a dry weight basis; and
- (11) animal mortality.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104 and 02B .0212 through .0218).

15A NCAC 02T .1310 ANIMAL WASTE RESIDUALS MANAGEMENT

(a) This Rule shall apply to the treatment, storage, transportation, use, and disposal of animal waste residuals to be applied to a lawn, home garden, or public contact use site or sold or given away in a bag or other container for application to the land. This Rule shall not apply to the treatment, storage, transportation, use, or disposal of:

- (1) animal waste residuals applied to agricultural land in accordance with Rule .1303, Rule .1304, Rule 1305, or Rule .1307 of this Section or Rule .1403 of this Subchapter;
- (2) up to four cubic yards of animal waste residuals distributed from a facility subject to regulation under Rule .1303 or Rule .1304 of this Section per visit to individuals for personal use, with a maximum of ten cubic yards per year per individual;
- (3) oil, grease, grit, and screenings from wastewater treatment facilities;
- (b) For new and modified sources of animal waste residuals, the applicant shall submit a permit application in writing to the Division that includes the following:
 - (1) site maps depicting the location of the source and demonstrate compliance with siting setbacks applicable to animal waste management systems established in G.S. 106-803 and NRCS standards at the time of construction;
 - (2) a complete analysis of the animal waste residuals. The analysis shall include all pollutants identified in Paragraph (c) in this Rule, nutrients and micronutrients, and proof of compliance with the pathogen requirements in Paragraph (d) of this Rule if applicable;
 - (3) a sampling and monitoring plan that describes how the source will comply with Paragraphs (c) and (d) of this Rule, if applicable;
 - (4) a marketability statement detailing destinations and approximate amounts of the final product to be distributed; and
 - (5) a copy of the label and information sheet that complies with Paragraph (e) of this Rule.

(c) Animal waste residuals shall not be applied to a lawn, home garden, or public contact use site nor shall animal waste residuals be sold or given away in a bag or other container for application to the land if the concentration of any pollutant in that residual exceeds the following concentration for that pollutant on a dry weight basis:

Pollutant	Ceiling Concentration (milligrams per kilogram)
Copper	1,500
Zinc	2,800

(d) Animal waste residuals to be applied to a lawn, home garden, or public contact use site or sold or given away in a bag or other container for application to the land shall meet the pathogen requirements of Rule .1106(a)(2) of this Subchapter.

(e) For animal waste residuals that are sold or given away in a bag or other container for application to the land, either a label shall be affixed to the bag or other container, or an information sheet shall be provided to the person who receives the animal

waste residuals. The label and information sheet shall contain the following information:

- (1) the name and address of the person who prepared the animal waste residuals;
- (2) a statement that land application of the animal waste residuals is prohibited except in accordance with the instructions on the label and information sheet;
- (3) a statement that animal waste residuals must be applied at agronomic rates and recommended rates for intended uses;
- (4) a statement that the animal waste residuals may not be applied to any site that is flooded, frozen, or snow covered;

- (5) a statement that adequate procedures must be provided to prevent surface runoff from carrying any disposed or stored animal waste residuals into any surface waters;
- (6) a statement that identifies that this material must be prevented from entering any public or private water supply source, including wells, stream, lake, or rivers;
- (7) the pollutant concentration for pollutants listed in Paragraph (c) of this Rule; and
- (8) the nitrogen and phosphorous concentration.

(f) Monitoring and Reporting.

- (1) Animal waste residuals subject to this Rule shall be monitored for pollutants listed in Paragraph (c) of this Rule and for pathogens described in Paragraph (d) of this Rule, as applicable, at the frequency stipulated for each residuals source facility:

Metric Tons per 365 day period

(Dry Weight Basis)

Greater than zero but less than 290

Equal to or greater than 290 but less than 1,500

Equal to or greater than 1,500 but less than 15,000

Equal to or greater than 15,000

Monitoring Frequency

Once per year

Once per quarter (four times per year)

Once per 60 days (six times per year)

Once per month (12 times per year)

- (2) A report of all monitoring and reporting requirements specified in the permit shall be submitted to the Division by the permittee annually, on or before March 1st of each calendar year.
- (3) All records required by this Paragraph shall be retained for five years.

19A NCAC 02E .0412 AIRCRAFT LANDING AND TAKING OFF ON HIGHWAYS

(a) It shall be unlawful for aircraft to take-off or land on any road or highway of the State Highway System, unless authorized by the Chief Engineer, in writing. The Chief Engineer may authorize take-off or landing on any road or highway of the State Highway System based upon the following:

- (1) a showing of good cause, which may include issues of national security, safety of the general public, or natural disasters; and
- (2) arrangements have been made for law enforcement officials to redirect or administer Vehicular traffic on the highway during the landing or take-off.

(b) Nothing in this Rule shall prohibit an aircraft from landing on any roads or highways in an emergency situation if the landing is necessary to prevent injury or death to the occupants of the aircraft, provided that the emergency landing can be made without danger to persons and vehicles on or near the highway. After an emergency landing, take-off by the aircraft may be permitted under the direction of a law enforcement officer if it is determined by the law enforcement officer that the take-off will not endanger persons or vehicles on the highway and there are no other practical nor feasible means of removing the aircraft.

History Note: Authority G.S. 136-18(5);

Eff. July 1, 1978;

Temporary Amendment Eff. March 15, 1982, for a Period of 47 Days to Expire on May 1, 1982;

Temporary Amendment Expired Eff. May 1, 1982;

Amended Eff. December 1, 2012; October 1, 1982;

Readopted Eff. March 1, 2019.

History Note: Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;

Eff. September 1, 2018;

Amended Eff. March 1, 2019.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0408 TEMPORARY BRIDGE WEIGHT LIMITS AND CLOSINGS

After an inspection of any bridge on the State Highway System, any Department of Transportation bridge safety inspector, or any bridge maintenance supervisory personnel, may temporarily lower the authorized weight limits on a bridge, or close the bridge as the circumstances may warrant, if, in his or her judgment, the bridge is not capable of carrying the authorized weight. Such limitation or bridge closing shall remain in effect, not to exceed 60 days, until an analysis of the bridge is made and action taken based upon the bridge analysis.

History Note: Authority G.S. 136-72; 143B-350;

Eff. July 1, 1978;

Readopted Eff. March 1, 2019.

19A NCAC 02E .0418 FENCING WITHIN RIGHT-OF-WAY

It shall be unlawful for any person to erect a fence, of any kind, within the right-of-way limits of any highway, except upon the written permission of the Chief Engineer's Office upon a showing that the change in fencing is beneficial to the public.

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.

19A NCAC 02E .0419 CULTIVATING CROPS AND MAINTAINING PASTURES WITHIN RIGHT-OF-WAY

It shall be unlawful for any person to plant, cultivate, or grow any crop, or to maintain any pasture or pasture grass, within the right-of-way limits of any highway, unless written permission from the Chief Engineer's Office has been obtained upon a showing that the change in cultivating, growing or maintenance of crops is beneficial to the public.

History Note: Authority G.S. 136-18(10); 136-93; 143B-350(f);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.

19A NCAC 02E .0420 CONSTRUCTION WITHIN RIGHT-OF-WAY

(a) Unless authorized in writing by the Chief Engineer's Office upon a showing that the change in construction within the right-of-way is beneficial to the public, it shall be unlawful for any person or firm to construct, place, or erect any of the following, or any combination thereof, over any road, highway, or right-of-way of the State Highway System:

- (1) power, broadband, telephone, or other poles;
- (2) signboards or fences;
- (3) water, gas, oil, petroleum products, steam chemicals, sewage, drainage, irrigation, or other pipelines; or
- (4) wires, cables, or other obstructions.

(b) Rules for the preparation and submission of applications for utility encroachments shall be found at 19A NCAC 02B .0500.

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.

19A NCAC 02E .0421 UTILITY WIRES OR CABLES OVER HIGHWAYS

(a) For purposes of this Rule, the American National Standards Institute's National Electrical Safety Code (ANSI Code) is incorporated by reference and includes any subsequent amendments and editions. The ANSI Code may be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331, telephone number 1-800-678-IEEE, website <https://webstore.ansi.org>, at a cost of forty-three dollars and fifty cents (\$43.50).

(b) It shall be unlawful to construct any power, telephone, television, telegraph, or any other utility wires or cables over highways or roads on the State Highway System unless such wires have the minimum vertical clearance above the highest elevation of the road or highway crossed by them as set forth in the ANSI Code for the installation and maintenance of electric supply and communication lines, except as set forth in Paragraph (c) of this Rule.

(c) A minimum vertical clearance of 18 feet shall be maintained for overhead power and communication lines crossing all highways. The lateral and vertical clearance from bridges shall conform with the ANSI Code; however, greater clearances at bridges may be required by the Department of Transportation to provide for bridge construction and maintenance. Parallel utility lines occupying highway right-of-way shall maintain a minimum vertical clearance as required in the National Electrical Safety Code.

(d) Rules for the preparation and submission of applications for utility encroachments can be found in 19A NCAC 02B .0500.

History Note: Authority G.S. 136-18(10); 136-89.50; 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; November 1, 1991;
Readopted Eff. March 1, 2019.

19A NCAC 02E .1006 APPLICATION FOR DESIGNATION

(a) The following items shall be included for a Scenic Byway application:

- (1) the proponent's name, address, telephone number, and email address, and the name, address, email address, and telephone number of the organization, if applicable;
- (2) a written description of the section of highway to be designated, including a description of the section's unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features;
- (3) photographic files of the area that demonstrate the section's qualities of significance;
- (4) county maps with the proposed route marked;
- (5) copies of zoning ordinances applicable to the route or a written list of existing land-use areas for unzoned areas;
- (6) documentation of notice given to local governments adjacent to proposed route;
- (7) for unzoned areas, a written list of commercial or industrial activities adjacent to or within 800 feet of the pavement of the proposed route; and
- (8) an optional Scenic Byway Management Plan may be submitted with an application.

(b) Completed applications shall be sent to the Roadside Environmental Unit, 1557 Mail Service Center, Raleigh, NC 27699-1557, no later than August 31 of each year. Incomplete applications shall not be accepted and will be returned to the proponent.

(c) The application and all application materials are public records pursuant to Chapter 132 of the North Carolina General Statutes.

History Note: Authority G.S. 136-18(5); 136-18(31); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Readopted Eff. March 1, 2019.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14H .0401 LICENSEES AND STUDENTS

(a) Notwithstanding Rule .0201 in this Subchapter, this Rule applies to licensees and students in practice in cosmetic art schools and shops. Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

(b) Each licensee and student shall wear clean garments and shoes while serving patrons.

(c) Licensees or students shall not use or possess in a cosmetic art school or shop any of the following:

- (1) Methyl Methacrylate Liquid Monomer, a.k.a. MMA;
- (2) razor-type callus shavers designed and intended to cut growths of skin including skin tags, corns, and calluses;
- (3) FDA rated Class III devices;
- (4) carbolic acid (phenol) over two percent strength;
- (5) animals including insects, fish, amphibians, reptiles, birds, or non-human mammals to perform any service; or
- (6) a variable speed electrical nail file unless it has been designed for use on a natural nail.

(d) A licensee or student shall not:

- (1) use any product, implement, or piece of equipment in any manner other than the product's, implement's, or equipment's intended use as described or detailed by the manufacturer;
- (2) treat any medical condition unless referred by a physician;
- (3) provide any service unless trained prior to performing the service;
- (4) perform services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) an inflamed, infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on;
- (5) alter or duplicate a license issued by the Board;

(6) advertise or solicit clients in any form of communication in a manner that is false or misleading;

(7) use any FDA rated Class II device without the documented supervision of a licensed physician;

(8) use any product that will penetrate the dermis;

(9) make any statement to a member of the public, either verbally or in writing, stating or implying any action is required or forbidden by Board rules when such action is not required or forbidden by Board rules. A violation of this prohibition is considered practicing or attempting to practice by fraudulent misrepresentation is set forth in 21 NCAC 14P .0108 of this Chapter; or

(10) use or possess any product banned by the FDA. A list of banned products is available at www.fda.gov.

(e) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Safety Data Sheet.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-24; Eff. April 1, 2012; Amended Eff. August 1, 2014; March 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. March 1, 2019; March 1, 2018.

21 NCAC 14H .0505 RULE COMPLIANCE AND ENFORCEMENT MEASURES

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or
- (2) razor-type callus shavers designed and intended to cut growths of skin including skin tags, corns, and calluses.

(b) The use of or possession of the following in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per use or possession:

- (1) animals including insects, fish, amphibians, reptiles, birds, or non-human mammals to perform any service; or
- (2) variable speed electrical nail file unless it has been designed for use on the natural nail.

(c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:

- (1) use of any product, implement, or piece of equipment in any manner other than the product's, implement's, or equipment's intended use as described or detailed by the manufacturer;
- (2) treatment of any medical condition unless referred by a physician;

- (3) use of any product that will penetrate the dermis;
- (4) provision of any service unless trained prior to performing the service;
- (5) performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) inflamed infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on;
- (6) alteration of or duplication of a license issued by the Board;
- (7) advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or
- (8) use of any FDA rated Class II device without the documented supervision of a licensed physician.

- (d) The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this Subchapter including the date, time, reason, and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.
- (e) The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.
- (f) The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.
- (g) The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).
- (h) The failure to provide ventilation at all times in the areas where patrons are serviced in cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).
- (i) The failure to maintain equipment and supplies necessary to perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).
- (j) The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).
- (k) Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop, or school shall result in a mandatory disciplinary hearing in accordance with 21 NCAC 14C.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27; 88B-29;
Eff. April 1, 2012;
Amended Eff. August 1, 2014;
Readopted Eff. January 1, 2016;
Amended Eff. March 1, 2019; March 1, 2018.

CHAPTER 32 - MEDICAL BOARD

21 NCAC 32W .0112 IDENTIFICATION REQUIREMENTS

An Anesthesiologist Assistant licensed under this Subchapter shall keep proof of current licensure and registration available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag identifying the licensee as an "Anesthesiologist Assistant," which may be abbreviated as "AA," or as a "Certified Anesthesiologist Assistant," which may be abbreviated as "CAA."

History Note: Authority G.S. 90-18.5; 90-640;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. March 1, 2019.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2403 DRUGS AND DEVICES TO BE DISPENSED

(a) Pursuant to the provisions of G.S. 90-85.34A(a)(3), prescription drugs and devices included in the following general categories may be dispensed by registered nurses in local health department clinics when prescribed for the indicated conditions:

- (1) Anti-tuberculosis drugs, as recommended by the North Carolina Department of Health and Human Services in the North Carolina Tuberculosis Policy Manual (available at www.ncdhhs.gov), when used for the treatment and control of tuberculosis;
- (2) Anti-infective agents used in the control of sexually-transmitted diseases as recommended by the United States Centers for Disease Control in the Sexually Transmitted Diseases Treatment Guidelines (available at www.cdc.gov);
- (3) Natural or synthetic hormones and contraceptive devices when used for the prevention of pregnancy;
- (4) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions;
- (5) Vitamin and mineral supplements;
- (6) Opioid antagonists prescribed pursuant to G.S. 90-12.7;
- (7) Epinephrine auto-injectors prescribed pursuant to G.S. 115C-375.2A; and
- (8) Over-the-counter nicotine replacement therapies.

(b) Regardless of the provisions set out in this Rule, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code 801 through 904, or regulations

enacted pursuant to that Act, 21 CFR 1300 through 1308, or by the North Carolina Controlled Substances Act, G.S. 90-86 through 90-113.8, may be dispensed by registered nurses pursuant to G.S. 90-85.34A.

History Note: Authority G.S. 90-12.7; 90-85.6; 90-85.34A; 115C-375.2A;

Eff. March 1, 1987;

Amended Eff. September 1, 2016; January 1, 2015; August 1, 2014; May 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;

Amended Eff. March 1, 2019.

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.

(b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less. A pharmacist employee not meeting this requirement may serve as temporary pharmacist-manager of the permit holder for a period not to exceed 90 days from the departure date of the previous pharmacist-manager, if the pharmacist employee is present at least 20 hours per week in the pharmacy.

(c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of the inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.

(d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control that will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.

(e) The pharmacist-manager shall maintain authority and control over any and all keys to the pharmacy and shall be responsible for the security of the pharmacy. If no pharmacist will be present in the pharmacy for a period of 90 minutes or more, the pharmacy shall be secured to prohibit unauthorized entry.

(f) These duties shall be in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the rules in this Chapter.

(g) A person shall not simultaneously serve as pharmacist-manager at more than one pharmacy, unless:

- (1) the person is serving simultaneously as pharmacist-manager at pharmacies holding a limited service permit; or
- (2) the person is serving simultaneously as pharmacist-manager at two pharmacies holding full service permits, one of which is a newly permitted pharmacy that has not yet begun providing pharmacy services to patients. When the newly permitted pharmacy begins providing

pharmacy services to patients or six months from the issuance of the new pharmacy permit, whichever occurs sooner, the person shall relinquish the former pharmacist-manager position and notify the Board of having done so.

(h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals, and return the pharmacy permit to the Board's offices within 10 days of the closing date. If possible, notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30-day period prior to the closing date. During the 30-day period prior to the closing date, the pharmacist-manager and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the pharmacist-manager and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.

(i) If possible, the pharmacist-manager shall ensure that notice of the temporary closing of any pharmacy for more than 14 consecutive days is given to the public by posted notice at the pharmacy at least 30 days prior to the closing date, and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30-day period prior to the closing date. During the 30-day period prior to the closing date, the pharmacist-manager and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.

(j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals and minimize the interruption of pharmacy services in the event of a natural disaster such as hurricane or flood.

(k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.

(l) The pharmacist-manager shall report to the Board information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances, and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.

(m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (l) of this Rule, except as required by law. No report made under

Paragraph (l) of this Rule shall not be released except as required by law.

(n) In any Board proceeding, the Board shall consider compliance with Paragraph (l) of this Rule as a mitigating factor and noncompliance with Paragraph (l) of this Rule as an aggravating factor.

(o) The pharmacist-manager shall ensure that all starter doses of medication supplied to doctors' offices from the pharmacy are accompanied by written materials advising the patient that such doses of medication may be supplied by any pharmacy. Starter doses shall be limited to a 24 hour dose supply per patient.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32;

Eff. May 1, 1989;

Amended Eff. April 1, 2006; February 1, 2005; August 1, 2002; December 1, 2001; April 1, 2001; April 1, 1999; July 1, 1996; March 1, 1992; October 1, 1990;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;

Amended Eff. March 1, 2019.

CHAPTER 68 - SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

21 NCAC 68 .0203 DESIGNATION AS SUBSTANCE ABUSE COUNSELOR INTERN

(a) To be designated as a Substance Abuse Counselor Intern, a counselor shall:

- (1) Submit Registration status issued by the Board;
- (2) Provide documentation to the Board verifying the completion of 300 hours of supervised practice by a Certified Clinical Supervisor or Clinical Supervisor Intern;
- (3) Achieve a passing score on the Alcohol and Drug Counselor examination developed by the IC&RC or its successor organization; and
- (4) Pay a non-refundable, one hundred fifty dollar (\$150.00) exam fee plus a one hundred fifty dollar (\$150.00) certification fee if not already Registered with the Board.

(b) Upon the failure of an applicant to achieve a passing score, the applicant may request a reexamination and pay a non-refundable reexamination fee of one hundred fifty dollars (\$150.00) after a period of three months from the date of the failed test.

(c) Once an individual has been designated as a Substance Abuse Counselor Intern, he or she may function as a counselor intern under an approved supervisor at a ratio of one hour of supervision for every 40 hours of practice.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.39; 90-113.40; 90-113.41;

Eff. August 1, 1996;

Amended Eff. August 1, 2002; August 1, 2000;

Amended Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0205 CERTIFIED SUBSTANCE ABUSE COUNSELOR CERTIFICATION

Requirements for certification as a Certified Substance Abuse Counselor shall be as follows:

- (1) Completion of 6,000 hours of paid or volunteer supervised experience as set out in G.S. 90-113.40(a). If the work setting is not exclusively substance abuse focused, the applicant may accumulate experience proportional to the substance abuse services performed or as determined and verified by the applicant supervisor.
- (2) Board approved education and training of at least 270 clock hours, consisting of:
 - (a) Substance Abuse Specific (SAS) education and training in the amount of at least 190 hours;
 - (b) Up to 80 hours may be directed toward general professional skill building to enhance counselor development;
 - (c) No more than 25% of the 270 hours (67.5) hours may be in-service education received within the applicant's organization by staff of the same organization;
 - (d) The 190 Substance Abuse Specific clock hours needed for initial certification must be in the core competencies. Core competencies are listed as follows:
 - (i) Basic alcoholism and drug addiction knowledge;
 - (ii) Screening, intake, orientation, and assessment;
 - (iii) Individual, group, and family counseling and intervention techniques;
 - (iv) Case management, treatment planning, reporting, and record keeping;
 - (v) Crisis intervention skills;
 - (vi) Prevention and client education;
 - (vii) Consultation, referral, and networking that utilizes community resources;
 - (viii) Ethics, legal issues, and confidentiality;
 - (ix) Special populations that include individuals or groups with ethnic, cultural, sexual orientation, and gender characteristics as well as persons dealing with HIV, co-occurring disabilities, persons with criminal justice related issues, and perinatal issues;

- (x) Physiology and pharmacology of alcohol and other drugs that include the licit and illicit drugs, inhalants, and nicotine;
- (xi) Psychological, emotional, personality, and developmental issues; and
- (xii) Traditions and philosophies of 12-step and other recovery support groups;
- (e) Of the 270 clock hours, applicants for certification as a Substance Abuse Professional must document six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, six hours professional ethics education, and six hours of education to be selected from the following:
 - (i) nicotine use disorder;
 - (ii) psychopathology;
 - (iii) evidence-based treatment;
 - (iv) substance use disorder issues and older adults;
 - (v) substance use disorder issues affecting veterans; and
 - (vi) substance use disorder and domestic violence.
- (3) A one hundred fifty dollar (\$150.00) exam fee and a two hundred dollar (\$200.00) non-refundable certification fee, unless previously paid. The applicant may request a reexamination and pay a non-refundable reexamination fee as set out in G.S. 90-113.38(c) for the written exam if a passing score is not achieved and at least three months have passed from the date of failed test.
- (4) Achieving a passing score on the IC&RC or its successor organization Alcohol and Drug Counselor exam.
- (5) Completed evaluation forms by the professional's applicant supervisor documenting 6,000 hours of clinical substance use disorder counseling experience submitted to the Board, and two references from other substance use disorder professionals as part of the application for certification.
- (6) An attestation or otherwise signed adherence by the applicant to the Ethical Standards of the Board.
- (7) Documentation of highest level education. Verification of high school graduation or completion of GED may be evidenced by diploma. Applicants presenting baccalaureate or advanced degrees must submit a completed transcript.
- (8) Completed registration application found on the Board's website.
- (9) Resume.

- (10) Job description that verifies job function to include the 12 Core Functions.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; Eff. August 1, 1996; Amended Eff. January 1, 2010; August 1, 2002; August 1, 2000; Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0208 RENEWAL REQUIREMENTS FOR COUNSELOR, CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL AND PREVENTION CONSULTANT

(a) In order to renew a certification, a certified substance abuse counselor, certified criminal justice addictions professional, and certified substance abuse prevention consultant shall:

- (1) Complete 60 hours of training recognized by the Board as follows:
 - (A) No more than 25 percent may be in-service education, received within the professional's place of employment by staff of the same employment;
 - (B) No more than 25 percent may be educational training presented by the renewing professional. A presentation shall be a part of an event recognized by the Board as set out in the rules of this Chapter;
 - (C) An applicant shall include documentation of each event submitted;
 - (D) All applicants shall include three hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, three hours of professional ethics training and education, and three hours of education to be selected from the list appearing in Rule 21 NCAC 68 .0205(e); and
 - (E) No more than 50 percent shall be self-study or pre-recorded online training; and
- (2) Submit the following:
 - (A) A completed renewal application found on the Board website;
 - (B) A non-refundable one hundred fifty dollar (\$150.00) recertification fee; and
 - (C) An attestation or otherwise signed adherence by the applicant to the Ethical Standards of the Board.

- (b) Thirty hours shall be substance use disorder specific.
- (c) The renewal application of a certified criminal justice addictions professional and a certified substance abuse counselor shall include post-certification supervision agreement between a practice supervisor and supervisee. The supervision required by this Rule shall be provided according to G.S. 90-113.37A(b).

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37A; 90-113.38; 90-113.39;
Eff. August 1, 1996;
Amended Eff. June 1, 2011; April 1, 2011; January 1, 2010; April 1, 2003; August 1, 2002; August 1, 2000;
Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0211 PROCESS FOR CLINICAL SUPERVISOR CERTIFICATION AND RENEWAL

(a) In order to be certified as a certified clinical supervisor, an applicant shall:

- (1) Obtain and maintain a license as a licensed clinical addictions specialist to be eligible for certified clinical supervisor;
- (2) Hold a master's or higher degree in a human services field with a clinical application from a regionally accredited college or university;
- (3) Submit documentation signed by the certified clinical supervisor of 4000 hours or two years full-time experience in a supervisory role working or volunteer in a clinical setting, supervised at a ratio of one hour of supervision for every 80 hours of practice in the field of alcohol and other drug misuse;
- (4) Submit documentation of 30 hours of clinical supervision specific education for initial certification. These hours shall be reflective of clinical supervision domains;
- (5) Submit three references. One from a certified clinical supervisor who can attest to supervisory competence and two from either substance use disorder professionals who have been supervised by the candidate or substance use disorder professionals who can attest to the applicant's competence;
- (6) Achieve a passing score on the IC&RC or its successor organization's clinical supervisor examination; and
- (7) Pay all application fees. A fee of twenty-five dollars (\$25.00) shall be submitted to the Board. Also, an applicant shall submit a certification fee of two hundred dollars (\$200.00) and an examination fee of one hundred fifty dollars (\$150.00).

(b) In order to renew as a certified clinical supervisor, the certified professional shall submit to the Board the following:

- (1) A completed renewal found on the Board website with 15 clock hours of continuing education in the field of clinical supervision;
- (2) An attestation or otherwise signed adherence by the applicant stating his or her commitment to follow the Board's code of ethical conduct; and
- (3) A recertification or renewal fee of one hundred fifty dollars (\$150.00).

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.38; 90-113.40; 90-113.41; 90-114.41A;
Eff. August 1, 1996;
Amended Eff. January 1, 2010; August 1, 2002; August 1, 2000;

Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0212 PROCESS FOR RESIDENTIAL FACILITY DIRECTOR CERTIFICATION

(a) Residential facility director certification may be obtained and continued by any person credentialed as a certified substance abuse counselor or licensed clinical addictions specialist.

(b) Requirements for certification shall be as follows:

- (1) 50 hours of academic and didactic management specific training;
- (2) Recommendation of applicant's current supervisor;
- (3) Recommendation of a colleague or co-worker of the applicant; and
- (4) An application packet fee of twenty-five dollars (\$25.00) and a certification fee of two hundred dollars (\$200.00).

(c) In addition to meeting the continuing education requirements to practice as a certified substance abuse counselor or licensed clinical addictions specialist, in order to maintain certification as a certified substance abuse residential facility director, the applicant shall take 40 hours of continuing education every two years.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37A; 90-113.38; 90-113.39; 90-113.40;
Eff. August 1, 1996;
Amended Eff. January 1, 2010; August 1, 2002; August 1, 2000;
Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0305 LICENSURE REQUIREMENTS FOR INITIAL APPLICANTS FOR LICENSED CLINICAL ADDICTIONS SPECIALIST

In addition to meeting the requirements of G.S. 90-113.40, an applicant seeking licensure as a clinical addictions specialist shall submit the following:

- (1) Documentation of completion of:
 - (a) Six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education;
 - (b) Six hours of professional ethics training;
 - (c) Six hours of clinical supervision specific training; and
 - (d) Six hours selected from the following list:
 - (i) nicotine use disorder;
 - (ii) psychopathology;
 - (iii) evidence-based treatment;
 - (iv) substance use disorder issues and older adults;
 - (v) substance use disorder issues and veterans; and
 - (vi) substance use disorder issues and domestic violence.

All hours listed in this Item may be included in the 180 hours of substance use disorder training required for licensure;

- (2) A copy of a substance abuse specialty certificate or transcript if the applicant is applying under Criteria C as defined in G.S. 90-113.40 (c)(3), or is seeking education credit as described in Item (1) of this Rule under any other criteria outlined in G.S. 90-113.40 (c);
- (3) An official transcript of completed masters or other advanced degree in a human services field with a clinical application as found in Rule .0101(5) of this Chapter, if not previously submitted under Item (2) of this Rule;
- (4) A completed application found on the Board's website; and
- (5) Payment of the following fees:
 - (a) All applicants who are in the deemed status group shall make payment of a non-refundable application fee of ten dollars (\$10.00) and payment of a non-refundable credentialing fee of forty dollars (\$40.00).
 - (b) All other applicants shall make payment of an application fee of twenty-five dollars (\$25.00) and payment of a non-refundable certification fee of two hundred dollars (\$200.00).
 - (c) All applicants seeking credentialing pursuant to Criteria A, Criteria B, and Criteria C of G.S. 90-113.40(c) shall make payment of a non-refundable examination fee of one hundred fifty dollars (\$150.00). An applicant seeking credentialing pursuant to Criteria D (Deemed Status) who has not completed an examination as required by G.S. 90-113.41(b), shall complete and pass the examination at his or her own expense.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.40; 90-113.41;
Temporary Adoption Eff. November 15, 1997;
Eff. April 1, 1999;
Amended Eff. January 1, 2014; August 1, 2002;
Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

TITLE 25 - OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01D .0913 SALARY RATE

(a) If an employee transfers to a position having the same salary grade, the salary may be increased as long as the increase does not create internal salary inequity. For the purposes of this Rule, "internal salary inequity" exists when an employee's salary is 10 percent above or below that of others in similar classification having similar duties and responsibilities and with similar knowledge, skills, abilities, education and training, experience, and performance. The salary may be reduced if there is a lack of sufficient funds or if it results in the creation of internal salary

inequity. A reduction shall not occur when applied to employees with reduction-in-force priority consideration in which case the salary shall remain unchanged, unless the employee voluntarily offers or agrees to accept a lower salary rate by waiver obtained in the pre-screening phase of the selection process. If the employee is being reinstated to a higher class, the rules of Section .0300 of this Subchapter shall apply.

(b) When the transfer is to a higher class and results in a promotion, the rules in Section .0300 of this Subchapter shall apply.

(c) If the transfer is to a lower class and results in a demotion or reassignment, then the rules in Section .0400 of this Subchapter shall apply.

(d) If an employee is in an agency not utilizing a special entry rate and transfers to an agency that does, the special entry rate cannot be used as justification for a salary increase if both work stations are within the same geographic area.

(e) If an employee is receiving a higher rate of pay by virtue of working in a position where a geographic differential applies and transfers to a position where a geographic differential does not apply, whether in the same geographic area to a position without a differential, or to the same job in a geographic area without a differential, the employee's pay rate shall be reduced by the amount of the differential the employee had been receiving.

History Note: Authority G.S. 126-4;
Eff. March 1, 2019.

25 NCAC 01H .0631 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) An agency shall post its vacant positions.

(b) Vacancies that shall be filled from within the agency workforce shall have an application period of not less than five business days and shall be posted in at least the locations required by G.S. 126-7.1(a).

(c) Vacancies to be filled from within or outside the State government workforce are to be listed with the Office of State Human Resources and as required by G.S. 96-29. The vacancies shall have an application period of not less than five business days. For purposes of this Rule, "State government workforce" means those employees who are subject to Articles 1, 2, 5, 6, 7, 8, 13, and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement that includes:

- (1) For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum training and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c) the application period, and the contact information;
- (2) For banded classes: the position number, banded class title, competency level, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum training and experience, vacancy-specific qualifications as

determined by the agency in accordance with 25 NCAC 01H .0635(c), the application period, and the contact information; and

- (3) For all vacancy listings: a closing date, unless the classification has been determined as critical. Factors used in determining critical classifications include agency turnover; number of positions in class; geographic location of the position; scarcity of individuals with the required skills; and safety, health, or quality of care for clients. The critical classifications shall be approved by the State Human Resources Commission. On those classes determined to be critical, which shall be considered open and continuous postings, agencies shall determine how long applications shall be considered active. The State Human Resources Director or his or her designee shall report the number and type of continuous postings to the State Human Resources Commission.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision based upon a business need shall be made by the agency head. This includes vacancies:

- (1) that are committed to a budget reduction;
- (2) used to avoid a reduction in force;
- (3) used for disciplinary transfers or demotions;
- (4) to be filled by transfer of an employee to avoid the threat of bodily harm;
- (5) that are designated exempt policymaking under G.S. 126-5(d);

- (6) that must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security;
- (7) to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants;
- (8) to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a position subject to all provisions of the State Human Resources Act;
- (9) to be filled by a legally binding settlement agreement;
- (10) to be filled in accordance with a pre-existing written agency workforce plan; and
- (11) that must be filled immediately because of a widespread outbreak of a serious communicable disease.

(f) The Office of State Human Resources may withhold approval for an agency to fill a job vacancy as set out in G.S. 126-7.1.

History Note: Authority G.S. 96-29; 126-3(b); 126-4(4); 126-7.1; 126-14;
Eff. March 1, 2007;
Amended Eff. August 1, 2009; May 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016;
Amended Eff. March 1, 2019.

This Section contains information for the meeting of the Rules Review Commission April 18, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeffrey A. Poley
Brian P. LiVecchi

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES

April 18, 2019 May 16, 2019
June 20, 2019 July 18, 2019

AGENDA**RULES REVIEW COMMISSION****THURSDAY, APRIL 18, 2019 9:00 A.M.****1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 163A-159(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Soil and Water Conservation Commission – 02 NCAC 59D .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110 (Reeder)
 - B. Board of Elections and Ethics Enforcement - 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 (May)
 - C. Department of Health and Human Services - 10A NCAC 14J .0101, .0102, .0103, .0201, .0203, .0204, .0301, .0302, .0303, .0402, .0403, .0404, .0405, .0501, .0601, .0702, .0705, .0904, .1001, .1002, .1201, .1202, .1203, .1207, .1210, .1212, .1213, .1214, .1215, .1218, .1219, .1225, .1226 (Reeder)
 - D. Commission for the Blind - 10A NCAC 63C .0204, .0403 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed February 21, 2019 through March 20, 2019
 - Department of Health and Human Services (Reeder)
 - Environmental Management Commission 15A NCAC 02B .0402 - .0511 and 02H .0101 - .0407, .1201 - .1206 (May)
 - Environmental Management Commission 15A NCAC 02B .0601-.0735 and 02H .0501-.0507, .1301-.1306 (Reeder)
 - Environmental Management Commission 15A NCAC 02H .0901 - .0922
 - Environmental Management Commission 15A NCAC 02L (May)
 - Wildlife Resources Commission (May)
 - Marriage and Family Therapy Licensure Board (Reeder)
 - Board of Physical Therapy Examiners (Reeder)
 - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports

1. 10A NCAC 15 - Department of Health and Human Services (May)
 2. 10A NCAC 15 - Radiation Protection Commission (May)
- VII. Commission Business
- E. Status Update from DHHS in DHHS/CPH v. RRC
 - F. Periodic Review and Expiration of Existing Rules Readoption Schedule
 - Executive Committee to meet following Commission Business
 - Next meeting: Thursday, May 16, 2019
-

**Commission Review
Log of Permanent Rule Filings
February 21, 2019 through March 20, 2019**

RADIATION PROTECTION COMMISSION

The rules in Chapter 15 are from the Radiation Protection Commission and include general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); x-rays in the healing arts (.0600); use of radioactive sources in the healing arts (.0700); requirements for analytical x-ray equipment (.0800); requirements for particle accelerators (.0900); notices, instructions, reports and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); requirements for wire-line service operators and subsurface-tracer studies (.1300); tanning facilities (.1400); licenses for disposal site access (.1500); and standards for protections against radiation (.1600).

<u>Radioactive Materials and Accelerator Fee Amounts</u>	10A	NCAC	15	.1106
Amend*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

<u>Scope</u>	15A	NCAC	02B	.0402
Readopt without Changes*				
<u>Definition of Terms</u>	15A	NCAC	02B	.0403
Readopt with Changes*				
<u>Water Quality Based Effluent Limitations</u>	15A	NCAC	02B	.0404
Readopt with Changes*				
<u>Technology Based Effluent Limitations</u>	15A	NCAC	02B	.0406
Readopt with Changes*				
<u>Guidance for Determining a New Source</u>	15A	NCAC	02B	.0407
Readopt without Changes*				
<u>Incorporation by Reference</u>	15A	NCAC	02B	.0408
Adopt*				
<u>Purpose</u>	15A	NCAC	02B	.0501
Readopt without Changes*				
<u>Scope</u>	15A	NCAC	02B	.0502
Readopt without Changes*				
<u>Definitions</u>	15A	NCAC	02B	.0503
Readopt with Changes*				
<u>Classification of Waste Resources</u>	15A	NCAC	02B	.0504
Readopt without Changes*				
<u>Monitoring Requirements</u>	15A	NCAC	02B	.0505
Readopt with Changes*				

<u>Reporting Requirements</u> Readopt with Changes*	15A	NCAC	02B	.0506
<u>Tests and Measurements Applicable to Sics</u> Readopt with Changes*	15A	NCAC	02B	.0508
<u>Incorporation by Reference</u> Adopt*	15A	NCAC	02B	.0511
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt without Changes*	15A	NCAC	02B	.0601
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt with Changes*	15A	NCAC	02B	.0602
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt without Changes*	15A	NCAC	02B	.0603
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt without Changes*	15A	NCAC	02B	.0604
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt with Changes*	15A	NCAC	02B	.0605
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt with Changes*	15A	NCAC	02B	.0606
<u>Site Specific Water Quality Management Plan for the Goose...</u> Readopt with Changes*	15A	NCAC	02B	.0608
<u>Managing Activities within Riparian Buffers: Definitions</u> Adopt*	15A	NCAC	02B	.0610
<u>Managing Activities within Riparian Buffers: Authorizatio...</u> Adopt*	15A	NCAC	02B	.0611
<u>Managing Activities within Riparian Buffers: Forest Harve...</u> Adopt*	15A	NCAC	02B	.0612
<u>Neuse River Basin: Nutrient Sensitive Waters Management S...</u> Readopt with Changes*	15A	NCAC	02B	.0715
<u>Randleman Nutrient Strategy: Purpose and Scope</u> Readopt with Changes*	15A	NCAC	02B	.0720
<u>Randleman Lake Water Supply Watershed: Stormwater Require...</u> Readopt with Changes*	15A	NCAC	02B	.0721
<u>Randleman Lake Water Supply Watershed: Wastewater Dischar...</u> Readopt with Changes*	15A	NCAC	02B	.0722
<u>Tar-Pamlico River Basin-Nutrient Sensitive Waters Managem...</u> Readopt with Changes*	15A	NCAC	02B	.0735

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

<u>Purpose</u> Readopt with Changes*	15A	NCAC	02H	.0101
<u>Scope</u> Readopt with Changes*	15A	NCAC	02H	.0102
<u>Definition of Terms</u> Readopt with Changes*	15A	NCAC	02H	.0103
<u>Application: Permit Fees: Assessment for New Sources</u> Readopt with Changes*	15A	NCAC	02H	.0105
<u>Filing Applications</u> Readopt with Changes*	15A	NCAC	02H	.0106

<u>Staff Review and Evaluation</u> Readopt with Changes*	15A	NCAC	02H	.0107
<u>Fact Sheets</u> Readopt with Changes*	15A	NCAC	02H	.0108
<u>Public Notice</u> Readopt with Changes*	15A	NCAC	02H	.0109
<u>Public Hearings</u> Readopt with Changes*	15A	NCAC	02H	.0111
<u>Final Action on Permit Applications</u> Readopt with Changes*	15A	NCAC	02H	.0112
<u>Notification of Applicants</u> Readopt without Changes*	15A	NCAC	02H	.0113
<u>Modification and Revocation of Permits</u> Readopt with Changes*	15A	NCAC	02H	.0114
<u>Public Access to Records</u> Readopt with Changes*	15A	NCAC	02H	.0115
<u>Emergency Procedures</u> Readopt with Changes*	15A	NCAC	02H	.0116
<u>Investigations: Monitoring: and Reporting</u> Readopt with Changes*	15A	NCAC	02H	.0117
<u>Effluent Limitations and Standards</u> Readopt with Changes*	15A	NCAC	02H	.0118
<u>Limitation on Delegation</u> Readopt without Changes*	15A	NCAC	02H	.0120
<u>Suspension of Requirement for State NPDES Permits</u> Readopt without Changes*	15A	NCAC	02H	.0121
<u>Reliability</u> Readopt with Changes*	15A	NCAC	02H	.0124
<u>Permit Requirements for Peat Mining</u> Readopt with Changes*	15A	NCAC	02H	.0125
<u>General Permits</u> Readopt with Changes*	15A	NCAC	02H	.0127
<u>Authorization to Construct Permits</u> Readopt with Changes*	15A	NCAC	02H	.0138
<u>Minimum Design Requirements</u> Readopt with Changes*	15A	NCAC	02H	.0139
<u>Certification of Completion</u> Readopt without Changes*	15A	NCAC	02H	.0140
<u>Operational Agreements</u> Readopt with Changes*	15A	NCAC	02H	.0141
<u>Use/Wastewater Trtmnt Works Emgcy Main: Oper/Repair Fund</u> Readopt/Repeal*	15A	NCAC	02H	.0142
<u>Incorporation by Reference</u> Adopt*	15A	NCAC	02H	.0143
<u>Statement of Policy</u> Readopt/Repeal*	15A	NCAC	02H	.0401
<u>Applicability</u> Readopt/Repeal*	15A	NCAC	02H	.0402
<u>Definition of Coastal Areas</u> Readopt/Repeal*	15A	NCAC	02H	.0403
<u>Facility Location and Design</u> Readopt/Repeal*	15A	NCAC	02H	.0404

<u>Privately Owned Installations</u> Readopt/Repeal*	15A	NCAC	02H	.0405
<u>Publicly Owned Sewerage Facilities</u> Readopt/Repeal*	15A	NCAC	02H	.0406
<u>Exceptions from Requirements</u> Readopt/Repeal*	15A	NCAC	02H	.0407
<u>Applicability</u> Readopt with Changes*	15A	NCAC	02H	.0501
<u>Filing Application</u> Readopt with Changes*	15A	NCAC	02H	.0502
<u>Public Notice and Public Hearing</u> Readopt with Changes*	15A	NCAC	02H	.0503
<u>Hearing</u> Readopt with Changes*	15A	NCAC	02H	.0504
<u>Decision on Application for Certification</u> Readopt with Changes*	15A	NCAC	02H	.0507
<u>Purpose</u> Readopt with Changes*	15A	NCAC	02H	.0901
<u>Scope</u> Readopt with Changes*	15A	NCAC	02H	.0902
<u>Definition of Terms</u> Readopt with Changes*	15A	NCAC	02H	.0903
<u>Required Pretreatment Programs</u> Readopt without Changes*	15A	NCAC	02H	.0904
<u>POTW Pretreatment Program Implementation Requirements</u> Readopt without Changes*	15A	NCAC	02H	.0905
<u>Submission for Pretreatment Program Approval</u> Readopt without Changes*	15A	NCAC	02H	.0906
<u>Procedures for Pretreatment Program Approval, Revision an...</u> Readopt without Changes*	15A	NCAC	02H	.0907
<u>Reporting/Record Keeping Requirements for POTWS/Industria...</u> Readopt with Changes*	15A	NCAC	02H	.0908
<u>National Pretreatment Standards: Prohibited Discharges</u> Readopt without Changes*	15A	NCAC	02H	.0909
<u>National Pretreatment Standards: Categorical Standards</u> Readopt without Changes*	15A	NCAC	02H	.0910
<u>Adjustments for Fundamentally Different Factors</u> Readopt without Changes*	15A	NCAC	02H	.0912
<u>Public Access to Information</u> Readopt without Changes*	15A	NCAC	02H	.0913
<u>Upset Provision</u> Readopt without Changes*	15A	NCAC	02H	.0914
<u>Net/Gross Calculation</u> Readopt without Changes*	15A	NCAC	02H	.0915
<u>Pretreatment Permits</u> Readopt with Changes*	15A	NCAC	02H	.0916
<u>Pretreatment Permit Submission and Review</u> Readopt with Changes*	15A	NCAC	02H	.0917
<u>Local Law</u> Readopt without Changes*	15A	NCAC	02H	.0918
<u>Bypass</u> Readopt without Changes*	15A	NCAC	02H	.0919

<u>Pretreatment Facility Operation and Maintenance</u> Readopt with Changes*	15A	NCAC	02H	.0920
<u>Revision to Reflect POTW Removal of Pollutant</u> Readopt without Changes*	15A	NCAC	02H	.0921
<u>Hearings</u> Readopt without Changes*	15A	NCAC	02H	.0922
<u>Purpose</u> Readopt without Changes*	15A	NCAC	02H	.1201
<u>Definitions</u> Readopt without Changes*	15A	NCAC	02H	.1202
<u>Public Notice</u> Readopt without Changes*	15A	NCAC	02H	.1203
<u>Final Action on Special Orders by Consent</u> Readopt without Changes*	15A	NCAC	02H	.1204
<u>Action on Special Orders Issued without Consent</u> Readopt without Changes*	15A	NCAC	02H	.1205
<u>Water Quality Special Orders by Consent</u> Readopt with Changes*	15A	NCAC	02H	.1206
<u>Scope and Purpose</u> Readopt with Changes*	15A	NCAC	02H	.1301
<u>Filing Applications</u> Readopt with Changes*	15A	NCAC	02H	.1302
<u>Public Notice and Public Hearing</u> Readopt with Changes*	15A	NCAC	02H	.1303
<u>Decision on Applications for Permits or Certificates of C...</u> Readopt with Changes*	15A	NCAC	02H	.1304
<u>Soil Series</u> Adopt*	15A	NCAC	02H	.1306

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources. The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); risk-based assessment and corrective action for petroleum underground storage tanks (.0400); and risk-based assessment and correction action for non-UST petroleum releases (.0500).

<u>Purpose and Scope</u> Readopt without Changes*	15A	NCAC	02L	.0401
<u>Definitions</u> Readopt without Changes*	15A	NCAC	02L	.0402
<u>Rule Application</u> Readopt with Changes*	15A	NCAC	02L	.0403
<u>Required Initial Abatement Actions By Responsible Party</u> Readopt with Changes*	15A	NCAC	02L	.0404
<u>Requirements for Limited Site Assessment</u> Readopt with Changes*	15A	NCAC	02L	.0405
<u>Discharge or Release Classifications</u> Readopt with Changes*	15A	NCAC	02L	.0406
<u>Reclassification of Risk Levels</u> Readopt with Changes*	15A	NCAC	02L	.0407
<u>Assessment and Remediation</u> Readopt with Changes*	15A	NCAC	02L	.0408
<u>Notification Requirements</u> Readopt with Changes*	15A	NCAC	02L	.0409

RULES REVIEW COMMISSION

<u>Departmental Listing of Discharges or Releases</u> Readopt without Changes*	15A	NCAC	02L	.0410
<u>Establishing Maximum Soil Contamination Concentrations</u> Readopt without Changes*	15A	NCAC	02L	.0411
<u>Analytical Procedures for Soil Samples</u> Readopt without Changes*	15A	NCAC	02L	.0412
<u>Analytical Procedures for Ground Water Samples</u> Readopt without Changes*	15A	NCAC	02L	.0413
<u>Required Laboratory Certification</u> Readopt without Changes*	15A	NCAC	02L	.0414
<u>Discharges or Releases from Other Sources</u> Readopt without Changes*	15A	NCAC	02L	.0415
<u>Purpose and Scope</u> Readopt without Changes*	15A	NCAC	02L	.0501
<u>Definitions</u> Readopt with Changes*	15A	NCAC	02L	.0502
<u>Rule Application</u> Readopt without Changes*	15A	NCAC	02L	.0503
<u>Required Initial Response and Abatement Actions by Respon...</u> Readopt without Changes*	15A	NCAC	02L	.0504
<u>Requirements for Limited Site Assessment</u> Readopt without Changes*	15A	NCAC	02L	.0505
<u>Discharge or Release Classifications</u> Readopt without Changes*	15A	NCAC	02L	.0506
<u>Reclassification of Risk Levels</u> Readopt without Changes*	15A	NCAC	02L	.0507
<u>Assessment and Remediation Procedures</u> Readopt without Changes*	15A	NCAC	02L	.0508
<u>Notification Requirements</u> Readopt without Changes*	15A	NCAC	02L	.0509
<u>Departmental Listing of Discharges or Releases</u> Readopt without Changes*	15A	NCAC	02L	.0510
<u>Establishing Maximum Soil Contamination Concentrations</u> Readopt without Changes*	15A	NCAC	02L	.0511
<u>Analytical Procedures for Soil Samples</u> Readopt without Changes*	15A	NCAC	02L	.0512
<u>Analytical Procedures for Groundwater Samples</u> Readopt without Changes*	15A	NCAC	02L	.0513
<u>Required Laboratory Certification</u> Readopt without Changes*	15A	NCAC	02L	.0514
<u>Discharges or Releases from Other Sources</u> Readopt without Changes*	15A	NCAC	02L	.0515

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); waivers (.1100); emergency powers (.1200); wildlife poacher reward fund (.1300); interstate wildlife violator compact (wcv) (.1400); and evidence (.1500).

<u>Particular Offenses</u>	15A	NCAC	10A	.1001
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Readopt with Changes*

<u>Summary Disposition</u> Adopt*	15A	NCAC	10A	.1501
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The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Permitted Archery Equipment</u>	15A	NCAC	10B	.0116
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Readopt with Changes*

<u>Importation of Animal Parts</u>	15A	NCAC	10B	.0124
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Readopt with Changes*

<u>Bear</u>	15A	NCAC	10B	.0202
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Readopt with Changes*

<u>Squirrels</u>	15A	NCAC	10B	.0206
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Readopt with Changes*

<u>Rabbits</u>	15A	NCAC	10B	.0207
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Readopt with Changes*

<u>Open Seasons</u>	15A	NCAC	10B	.0303
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Readopt with Changes*

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205
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Readopt with Changes*

<u>Possession of Certain Fishes</u>	15A	NCAC	10C	.0211
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Readopt with Changes*

<u>Black Bass</u>	15A	NCAC	10C	.0305
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Readopt with Changes*

<u>Crappie</u>	15A	NCAC	10C	.0306
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Readopt with Changes*

<u>Shad</u>	15A	NCAC	10C	.0313
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Readopt with Changes*

<u>Striped Bass</u>	15A	NCAC	10C	.0314
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Readopt with Changes*

<u>Trout</u>	15A	NCAC	10C	.0316
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Readopt with Changes*

<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A	NCAC	10C	.0402
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Amend*

<u>Permitted Special Devices and Open Seasons</u>	15A	NCAC	10C	.0407
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Amend*

The rules in Subchapter 10D are game lands rules.

<u>Hunting on Game Lands</u>	15A	NCAC	10D	.0103
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Amend*

<u>Bear Sanctuaries</u>	15A	NCAC	10D	.0106
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Adopt*

The rules in Subchapter 10E concern fishing and boating access areas.

<u>Use of Areas Regulated</u>	15A	NCAC	10E	.0104
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Amend*

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Beaufort County</u> Amend*	15A	NCAC	10F	.0303
<u>Mecklenburg and Gaston Counties</u> Amend*	15A	NCAC	10F	.0333

MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

The rules in Chapter 31 are from the Marriage and Family Therapy Board and concern application for certification (.0200); examination (.0300); renewal (.0400); definitions (.0500); code of ethical principles (.0600); continuing education (.0700); associate status (.0800); and reciprocity (.0900).

<u>Credentials Required</u> Readopt without Changes*	21	NCAC	31	.0201
<u>Review Procedure</u> Readopt without Changes*	21	NCAC	31	.0202
<u>Issuance of License</u> Readopt without Changes*	21	NCAC	31	.0203
<u>Written Examination</u> Readopt without Changes*	21	NCAC	31	.0301
<u>Licensure Renewal Form</u> Readopt without Changes*	21	NCAC	31	.0401
<u>Reinstatement after Expiration</u> Readopt without Changes*	21	NCAC	31	.0403
<u>Return from Inactive Status</u> Readopt without Changes*	21	NCAC	31	.0404
<u>Appropriate Course of Study</u> Readopt without Changes*	21	NCAC	31	.0501
<u>Ongoing Supervision</u> Readopt without Changes*	21	NCAC	31	.0502
<u>Equivalency</u> Readopt without Changes*	21	NCAC	31	.0503
<u>Alternative to Clinical Practicum</u> Readopt without Changes*	21	NCAC	31	.0504
<u>Non-Degree Granting Post Graduate Training Programs</u> Readopt without Changes*	21	NCAC	31	.0505
<u>Direct Client Contact</u> Readopt without Changes*	21	NCAC	31	.0506
<u>Ethical Principles</u> Readopt without Changes*	21	NCAC	31	.0609
<u>Requirements for Continuing Education</u> Readopt without Changes*	21	NCAC	31	.0701
<u>Licensed Marriage and Family Therapy Associate Credential...</u> Readopt without Changes*	21	NCAC	31	.0801
<u>Licensed Marriage and Family Therapy Associate</u> Readopt without Changes*	21	NCAC	31	.0802
<u>Fees</u> Readopt without Changes*	21	NCAC	31	.1001
<u>Fund Suspension</u> Readopt without Changes*	21	NCAC	31	.1002

PHYSICAL THERAPY EXAMINERS, BOARD OF

The rules in Subchapter 48F concern certificates, fees, investigation, and record of licensees.

<u>Fees</u>	21	NCAC	48F	.0102
Readopt without Changes*				

<u>Investigations</u>	21	NCAC	48F	.0103
Readopt without Changes*				

The rules in Subchapter 48G concern retention of license including licensure renewal (.0100); lapsed licenses (.0200); refusal to renew or grant license suspension or revocation (.0300); probation or warning (.0400); contested case hearings (.0500); and disciplinary action (.0600).

<u>Complaints and Investigations</u>	21	NCAC	48G	.0504
Readopt without Changes*				

BUILDING CODE COUNCIL

<u>2017 NC Electrical Code/Ground-Fault Circuit-Interrupter ...</u>	210.8
Amend*	

<u>2017 NC Electrical Code/Minimum Cover Requirements</u>	Table 300.5
Amend*	

<u>2018 NC Building Code/Masonry Construction</u>	1705.4
Amend*	

<u>2018 NC Fire Code/Lockdown Plans</u>	404.2.3
Amend*	

<u>2018 NC Fire Code/Carbon Monoxide Alarm and Detection Sys...</u>	915
Amend*	

<u>2018 NC Fuel Gas Code/Carbon Monoxide Alarms</u>	311
Amend*	

<u>2018 NC Mechanical Code/Carbon Monoxide Alarms</u>	313
Amend*	

<u>2018 NC Residential Code/Lofts</u>	R202, R305, R310, R328
Amend*	

<u>2018 NC Residential Code/Deck Bracing</u>	AM109
Amend*	

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
18	ABC	04349	2/20/2019	NC Alcoholic Beverage Control Commission	v.	H and J Super Discount Inc T/A Super Discount Mini Mart	Overby
				-			
18	DHR	05011	2/11/2019	Primary Care Solutions Inc	v.	Cardinal Innovations Healthcare Inc	Malherbe
18	DHR	05357	2/25/2019	Iantha Southerland	v.	Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	06469	2/7/2019	Jesusito Rondon Guzman t/a Tienda Mexicana La Posadita	v.	NC Department of Health and Human Services	Ward
				-			
18	DOJ	04480	2/26/2019	Christopher Garris	v.	NC Criminal Justice Education and Training Standards Commission	Overby
18	DOJ	04664	2/13/2019	Rosalind R Smith	v.	NC Criminal Justice Education and Training Standards Commission	Ward
18	DOJ	06219	2/18/2019	Keifer Austin Furr	v.	NC Private Protective Services Board	Lassiter
18	DOJ	06375	2/27/2019	Benjamin Louis Zucker	v.	North Carolina Department of Justice Criminal Standards Division	Bawtinheimer
				-			
18	INS	04465	2/14/2019	Courtney N Viebrock	v.	North Carolina Department of State Treasurer	Malherbe
				-			
18	OSP	04046	2/6/2019	Heather Harper	v.	Department of Public Safety	Ward

CONTESTED CASE DECISIONS

				<u>UNPUBLISHED</u>			
17	CSE	07720	2/27/2019	Anthony R Coley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	01368	2/27/2019	Mackie Barfield Jr	v.	Child Support Services	Elkins
18	CSE	06220	2/7/2019	Douglas W Moyd (Mody)	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06235	2/22/2019	David Earl Rigg	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	06240	2/15/2019	Felicia H Middleton	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	06246	2/1/2019	Mark Davis-Mccrary	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06264	2/27/2019	Melanie K Marino	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06276	2/15/2019	Ricky Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06301	2/27/2019	Michael Anthony Cylar	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06306	2/27/2019; 3/15/2019	Gregory L Thompson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06388	2/15/2019	Michael Norwood	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	06392	2/27/2019	Mark A Preston	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06409	2/20/2019	John R Mitchell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06423	2/25/2019	Martin Malamah-Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06483	2/22/2019	Jessica Collazo	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	06488	2/15/2019	David M McDermott	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	06537	2/19/2019	Jeffrey S Brown	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	06554	2/18/2019	Georgie A Mendoza	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
18	CSE	06573	2/22/2019	Brian O'Neal Black	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton

CONTESTED CASE DECISIONS

18	CSE	06639	2/8/2019	Rashone Washington	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06673	2/18/2019	Arnold S Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06869	2/8/2019	William C Davis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06870	2/20/2019	Michael Kearney	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	06997	2/8/2019; 2/19/2019	Jason Leland McCrary	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	07088	2/8/2019	Roosevelt Moore	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	07094	2/19/2019	Erich M Pearl	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07359	2/20/2019	Felix Allende	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	07420	2/13/2019	Gregory Leng	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07424	2/7/2019	Andres Montoya Vazquez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07576	2/19/2019	Eric Garcia	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07600	2/18/2019	Kevin Michael Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
18	CSE	07636	2/19/2019	Nathan E Justice	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	07815	2/26/2019	William Walter	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
19	CSE	00051	2/19/2019	Sherman Addison	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
19	CSE	00280	2/26/2019	Scott F Rutherford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
18	DCS	02864	2/27/2019	Adelia Wyatt	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	DHR	01807	2/15/2019	Amjad Sheikh	v.	North Carolina Department of Health and Human Services (File No NCRR0052)	Ward

CONTESTED CASE DECISIONS

18	DHR	06238	2/4/2019	Reliable Home Care Ser Portia Shipman Owner	v.	North Carolina Department of Health and Human Services	May
18	DHR	06863	2/1/2019; 2/8/2019	Agatha Jean Morris	v.	NC Dept of Health and Human Svcs Health Care Personnel Reg Section	Jacobs
18	DHR	06989	2/22/2019	Shelia Holmes- Graham	v.	Betty Overman NC State Nurse Aid Registry Raleigh NC	Jacobs
18	DHR	07304	2/20/2019	Dena Causey	v.	Division of Child Development and Early Education	May
18	DHR	07512	2/26/2019	Taylor Phillips	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Overby
18	DHR	07669	2/26/2019	Noralene Locklear	v.	Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	07761	2/14/2019	The Goddard School at Edison Square	v.	Division of Child Development and Early Education	Malherbe
18	DHR	07768	2/25/2019	Valerie Denise Little	v.	Nurse Aide Listing No 169354 Health Care Personnel Registry	May
18	DOJ	06866	2/5/2019	Lance Paul White	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
18	DOJ	07492	2/28/2019	Christopher Bruce	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOJ	07496	2/26/2019	Mychella L George	v.	NC Sheriffs Education and Training Standards Commission	Bawtinhimer
19	DOL	00681	2/27/2019	Leslie Duke	v.	NC Dept of Labor OSHA OSHA Mr William Peterson	Bawtinhimer
18	OSP	06335	2/11/2019	Sharon Young	v.	Murdoch Development Center and NC Department of HAHS	Elkins