NORTH CAROLINA REGISTER

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Executive Orders
Environment, Health, and Natural Resources
Human Resources
Mortuary Science
Social Work, Board of
RRC Objections
Contested Case Decisions

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars ($120.00) for 24 issues. Individual issues may be purchased for ten dollars ($10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

(1) Single pages may be obtained at a minimum cost of two dollars and 50 cents ($2.50) for 10 pages or less, plus fifteen cents ($0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

(2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

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The *North Carolina Register* is cited by volume, issue, page number and date. **10:01 NCR 1-67, April 3, 1995** refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

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NORTH CAROLINA REGISTER
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(July 1995 - November 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing *15 days from notice*	* End of Required Comment Period *30 days from notice*	Last Day to Submit to RRC	** Earliest Effective Date
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95
10:13	10/02/95	09/11/95	09/18/95	10/17/95	11/01/95	11/20/95	01/01/96
10:14	10/16/95	09/25/95	10/02/95	10/31/95	11/15/95	11/20/95	01/01/96
10:15	11/01/95	10/11/95	10/18/95	11/16/95	12/01/95	12/20/95	02/01/96
10:16	11/15/95	10/24/95	10/31/95	11/30/95	12/15/95	12/20/95	02/01/96

This table is published 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 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule below, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.

EXECUTIVE ORDER NO. 85
ESCORTS FOR FOREIGN RESEARCH REACTOR SPENT NUCLEAR FUEL

WHEREAS, the United States Department of Energy intends to ship by rail Foreign Research Reactor Spent Nuclear Fuel from Sunny Point Army Terminal in North Carolina to the Savannah River federal facility in South Carolina;

WHEREAS, the United States Department of Energy has agreed that the State of North Carolina has a public safety interest in safeguarding these rail shipments; and

WHEREAS, the United States Department of Energy and the State of North Carolina have agreed to allow law enforcement and other State officials to review the status of the tracks ahead of the shipments, accompany the shipments, and provide escort for these shipments.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

Section 1.
That for all Foreign Research Reactor Spent Nuclear Fuel shipped through the State of North Carolina, the North Carolina State Highway Patrol Commander shall assign such personnel and equipment as he deems necessary to accompany the shipments, to review the status of the tracks ahead of the shipments, and to escort the shipments.

Section 2.
That such other State employees, including members of the Department of Crime Control and Public Safety, Division of Emergency Management, and Department of Environment, Health, and Natural Resources, Division of Radiation Protection, shall be assigned as is deemed necessary by the respective Department heads.

This Order is effective immediately and shall expire 90 days from this date unless terminated or extended by further Executive Order.

Done in Raleigh, this the 12th day of September, 1995.

EXECUTIVE ORDER NO. 86
RESCISSION OF EXECUTIVE ORDER 72

WHEREAS, Executive Order No. 72 was signed March 6, 1995, creating the North Carolina State Postsecondary Eligibility Review Commission; and

WHEREAS, on July 27, 1995, funding for the State Postsecondary Review Program was rescinded by federal law; and

WHEREAS, on August 22, 1995, the Commission held its final meeting and adopted a dissolution resolution.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Executive Order No. 72 (North Carolina State Postsecondary Eligibility Review Commission), dated March 6, 1995, is hereby rescinded.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 12th day of September, 1995.

CHAPTER 150B

THE ADMINISTRATIVE PROCEDURE ACT

[The following excerpt contains the statutory provisions of the Administrative Procedure Act as amended by the 1995 Regular Session of the 1995 General Assembly, by the following bills: HB 895, effective October 1, 1995; HB 230, effective December 1, 1995; SB 874, effective July 28, 1995; SB 943, effective January 1, 1996.]

Article 1.
General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. -- This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. -- This Chapter confers procedural rights.

(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Human Resources in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(d) Exemptions From Rule Making. -- Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.

(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue, ~~except that Parts 3 and 4 of Article 2A apply to the Department.~~ with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Air Cargo Airport Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(e) Exemptions From Contested Case Provi-sions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993 c. 501, s. 29, effective July 23, 1993.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.

(10) The North Carolina Air Cargo Airport Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(f) Exemption From All But Judicial Review. -- No Article in this Chapter except Article 4 applies to the University of North Carolina.

§ 150B-2. Definitions. -- As used in this Chapter,

(01) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

(1a) "Adopt" means to take final action to create, amend, or repeal a rule.

(1b) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1c) "Commission" means the Rules Review Commission.

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) Repealed by Session Laws 1991, c. 418, s. 3, effective October 1, 1991.

(2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.
2. Orders establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an

agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. ~~105-434~~ 105-449.80.

(8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418 s. 3, effective October 1, 1991.

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) This section does not apply to the Department of Correction.

Article 2.
Rule Making.
Repealed .

Article 2A.
Rules.
Part 1. General Provisions.

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.

(2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

(3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.

(4) Repeats the content of a law, a rule, or a federal regulation.

(5) Establishes a reasonable fee or other reasonable charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for

one of the following:

a. A service to a State, federal, or local governmental unit.

b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.

c. A transcript of a public hearing.

d. A conference, workshop, or course.

e. Data processing services.

(6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. -- A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. -- An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition requesting the creation or amendment of a rule, the notice of rule making it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition, state the name of the person who submitted the rule-making petition, set out the text of the requested rule change submitted with the rule-making petition, and state whether the agency endorses the proposed rule change.

(d) Review. -- Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Exception. -- This section does not apply to the Department of Correction.

§ 150B-21. Agency must designate rule-making ~~coordinator.~~ coordinator; duties of coordinator.

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator ~~must prepare notices of public hearings, coordinate access to the agency's rules, and~~ shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

(1) Preparing notices of public hearings.

(2) Coordinating access to the agency's rules.

(3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).

(4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.

(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to publication in the North Carolina Register of the proposed text of a permanent rule change.

(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

(1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or

(3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of

federal funds is conditioned, the rule-making coordinator shall:

(1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and

(2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. -- An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A federal regulation.

(5) A court order.

(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

~~An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by submitting to the Codifier of Rules written notice of its intent to adopt a permanent rule.~~

(b) Review. -- When an agency adopts a temporary rule it must submit the ~~rule,~~ rule and the agency's written statement of its findings of the need for the ~~rule, and the notice of intent to adopt a permanent~~ rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court ~~may~~ shall not grant an **ex parte** temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the ~~rule or 180 days from the date the rule becomes effective, whichever comes first.~~ rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule, if the Commission objects to the

permanent rule.

(e) Publication. -- When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule that does not differ substantially from the published temporary rule.

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. -- Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of rule-making proceedings in the North Carolina Register, unless the proposed rule is substantially the same as a temporary rule published in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Publish the text of the proposed rule in the North Carolina Register.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

~~Notice. -- Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice published in the North Carolina Register must include all of the following:~~

~~(1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule making.~~

~~(2) A short explanation of the reason for the proposed action.~~

~~(3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.~~

~~(4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date of a rule adopted on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.~~

~~(5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule making.~~

~~(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) requires the agency to hold a public hearing on the proposed rule when requested to do so.~~

~~(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule making.~~

~~(8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule making, a statement that a copy of the fiscal note can be obtained from the agency.~~

(b) Notice of Rule-Making Proceedings. -- A notice of rule-making proceedings published in the North Carolina Register must include all of the following:

(1) A statement of the subject matter of the proposed rule making.

(2) A short explanation of the reason for the proposed action.

(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.

(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

Publication in the North Carolina Register of an agency's rule-making agenda satisfies the requirements of this subsection if the agenda includes the information required by this subsection.

(c) Text After Notice of Rule-Making Proceedings. -- A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed rule.

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

An agency shall not publish the proposed text of a rule until at least 60 days after the date the notice of rule-making proceedings for the proposed rule was published in the North Carolina Register.

~~(b)~~ (d) Mailing List. -- An agency must maintain a mailing

list of persons who have requested notice of rule making. When an agency publishes ~~a rule-making notice~~ in the North Carolina ~~Register,~~ Register a notice of rule-making proceedings or the text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice of rule-making proceedings on the ~~rule or the~~ subject matter ~~for rule making~~ described in the ~~notice.~~ notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

~~(c)~~ (e) Hearing. -- An agency must hold a public hearing on a rule it proposes to adopt ~~in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.~~

~~An agency must hold a public hearing on a rule it proposes to adopt in the following two circumstances:~~

~~(1) The agency publishes a statement of the subject matter of the proposed rule making in the notice in the North Carolina Register.~~

~~(2)~~ ~~The~~ if the agency publishes the text of the proposed rule ~~in the notice~~ in the North Carolina Register and all the following apply:

~~a.~~ (1) The notice of rule-making proceedings does not schedule a public hearing on the proposed rule.

~~b.~~ (2) ~~Within 15 days after the notice is published, the~~ The agency receives a written request for a public hearing on the proposed ~~rule.~~ rule within 15 days after the notice of rule-making proceedings is published.

~~c. The proposed rule is not part of a rule making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule making.~~

~~d.~~ (3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

~~(d) Text After Subject Matter Notice. -- When an agency publishes notice of the subject matter of proposed rule making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject matter notice before the public hearing on the subject matter.~~

~~(e)~~ (f) Comments. -- An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published. An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on the text of ~~a~~ any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. ~~An agency must accept comments on a statement of the subject matter of proposed rule making until the public hearing on the subject matter.~~ An agency must consider fully all written and oral comments received.

~~(f)~~ (g) Adoption. -- An agency ~~may~~ shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and ~~may~~ shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency ~~may~~ shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection ~~(e).~~ (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on either the notice ~~published in the North Carolina Register~~ of rule-making proceedings or the proposed text of the ~~rule,~~ rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it ~~may~~ shall not take subsequent action on the rule without following the procedures in this Part.

~~(g)~~ (h) Explanation. -- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must

discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

~~(h)~~ (i) Record. -- An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule.

§ 150B-21.3. Effective date of rules.

(a) Temporary Rule. -- A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. -- A permanent rule approved by the Commission becomes effective ~~five business days after the Commission delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.~~ on the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a later effective date applies under this subsection. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission ~~becomes effective five business days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.~~ or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(c) Executive Order Exception. -- The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission and has not become effective under subsection (b) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill ratified by the General Assembly within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(d) Legislative Day and Day of Adjournment. -- As used in this section:

(1) A 'legislative day' is a day on which either house of the General Assembly convenes in a regular session.

(2) The 'day of adjournment' of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The 'day of adjournment' of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

~~(e)~~ (e) OSHA Standard. -- A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the

proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term 'substantial economic impact' means an aggregate financial impact on all persons affected of at least five million dollars ($5,000,000) in a 12-month period.

(b2) Content. -- A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.

(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.

(3) A description of the purpose and benefits of the proposed rule change.

(4) An explanation of how the estimate of expenditures was computed.

(c) Errors. -- An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error ~~made in entering the rule~~ in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

(1) Another rule or part of a rule adopted by the agency.

(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.

(3) Material adopted to meet a requirement of the federal government.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material.

§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code.

Part 3. Review by Commission.

§ 150B-21.8. Review of rule by Commission.

(a) Temporary Rule. -- The Commission does not review a temporary rule.

(b) Permanent Rule. -- An agency must submit a permanent rule adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

(c) Scope. -- When the Commission reviews an amendment to a rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies when the Commission objects to a part of a rule that is within its scope of review but is not changed by a rule amendment.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. -- The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General ~~Assembly.~~ Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. -- The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month.

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

(1) Approve the rule, if the Commission determines that the rule meets the standards for review.

(2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.

(3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

§ 150B-21.11. Procedure when Commission approves permanent rule.

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's ~~approval and must~~ approval, deliver the approved rule to the Codifier of ~~Rules.~~ Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee. ~~The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.~~

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule.

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. -- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. -- An agency that is not a board or commission must take one of ~~these~~ the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. -- When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

(d) Return of Rule. -- A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it ~~may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.~~ must notify the Codifier of Rules of its action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

~~(b) Entry in Code. -- When the Commission returns a rule to which it has objected to the agency that adopted the rule, the Commission must notify the Codifier of Rules of its action and of the basis of the Commission's objection. An agency whose rule is returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters in the North Carolina Administrative Code a rule to which the Commission objected, the entry must reflect the Commission's objection and must state the standard on which the Commission based its objection.~~

§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within 70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule.

§ 150B-21.14. Public hearing on a rule.

The Commission may call a public hearing on a rule when it extends the period for review of the rule. At the request of an agency, the Commission may call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission decides to call a public hearing on a rule, it must publish notice of the public hearing in the North Carolina Register.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing.

~~**§ 150B-21.15. Declaratory judgment action authorized when Commission objects to a permanent rule.**~~

~~(a) Standing. -- A person aggrieved by a permanent rule entered in the North Carolina Administrative Code with an objection by the Commission based on a lack of statutory authority may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency exceeded its authority in adopting the rule.~~

~~A declaratory judgment action under this section must be~~

~~filed within 90 days after the rule that is the subject of the action is entered in the Code. Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this section. A person who files an action for declaratory judgment under this section must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.~~

~~(b) Record. -- Within 10 days after a declaratory judgment action is filed under this section, the agency that adopted the rule that is the subject of the action must send to the court the original or a certified copy of the record in the Commission's review of the rule. The record consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.~~

~~(c) Effect. -- A rule remains in effect during the pendency of an action for declaratory judgment under this section unless the court suspends the rule after finding that the agency that adopted the rule has no substantial likelihood of prevailing in the action.~~

~~(d) Changes. -- While a rule is the subject of a declaratory judgment action under this section, the agency that adopted the rule may submit to the Commission changes in the rule to satisfy the Commission's objection. If the Commission determines that changes submitted to it satisfy its objection, the Commission must accept the changes and file the revised rule with the Codifier of Rules. The Codifier must then enter the rule in the North Carolina Administrative Code. When the Commission determines that changes submitted to it satisfy its objection, the agency that submitted the changes must notify the court of the changes and of the Commission's action.~~

§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight Committee.

The Commission must make monthly reports to the Joint Legislative Administrative Procedure Oversight Committee. The reports are due by the last day of the month. A report must include the rules approved by the Commission at its meeting held in the month in which the report is due and the rules the Commission returned to agencies during that month after the Commission objected to the rule. A report must include any other information requested by the Joint Legislative Administrative Procedure Oversight Committee. When the Commission sends a report to the Joint Legislative Administrative Procedure Oversight Committee, the Commission must send a copy of the report to the Codifier of Rules.

Part 4. Publication of Code and Register.

§ 150B-21.17. North Carolina Register.

(a) Content. -- The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

~~(1)~~ (1a) Notices of ~~proposed adoptions~~ rule-making proceedings, the text of ~~rules.~~ proposed rules, and the text of permanent rules approved by the Commission.

(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to § 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

(5) Orders of the Tax Review Board issued under G.S. 105-241.2.

(6) Other information the Codifier determines to be helpful to the public.

(b) Form. -- When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules.

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina

Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.

(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.

(3) Be in the physical form specified by the Codifier of Rules.

(4) Have been ~~reviewed~~ approved by the Commission, if the rule is a permanent rule.

§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.

(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.

(4) Rearrange definitions and lists.

(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule.

§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 15 days after it is adopted. The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. One of these exempt agencies must submit a rule to the Codifier of Rules within 15 days after it adopts the rule. The Codifier of Rules must compile, make available for public inspection, and publish a rule of one of these agencies in the North Carolina Administrative Code in the same manner as other rules in the Code.

§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. Codification of a rule in the North Carolina Administrative Code is **prima facie** evidence of compliance with this Article.

§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule making in the North Carolina Register and for filing a rule in the North Carolina Administrative Code.

§ 150B-21.24. Free copies of Register and Code.

(a) Register. -- The Codifier of Rules must distribute copies of the North Carolina Register as soon after publication as practical, without charge, to the following:

(1) A person who receives a free copy of the North Carolina Administrative Code.

(2) Upon request, one copy to each member of the General Assembly.

(b) Code. -- The Codifier of Rules must distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

(1) One copy to the board of commissioners of each county, to be placed at the county clerk of court's office or at another place selected by the board of commissioners.

(2) One copy to the Commission.

(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.

(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.

(5) One copy to the Administrative Office of the Courts.

(6) One copy to the Governor.

(7) Five copies to the Legislative Services Commission for the use of the General Assembly.

(8) Upon request, one copy to each State official or department to whom or to which copies of the appellate division reports are furnished under G.S. 7A-343.1.

(9) Five copies to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.

§ 150B-21.25. Paid copies of Register and Code.

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies received under this section must be credited to the General Fund.

Part 5. Rules Affecting Local Governments.

§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.

(a) Preliminary Review. -- At least 30 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the Governor for preliminary review:

(1) The text of the proposed rule change.

(2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. -- The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change.

§ 150B-21.27. Minimizing the effects of rules on local budgets.

In adopting permanent rules that would increase or decrease the expenditures or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b). If the computation of costs in a fiscal note indicates that the proposed rule change will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall specify the effective date of the change as July 1 following the date the change would otherwise become effective under G.S. 150B-21.3.

§ 150B-21.28. Role of the Office of State Budget and Management.

The Office of State Budget and Management shall:

(1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.

(2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.

(3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State

Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.

(a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

§ 150B-23.1. Mediated settlement conferences.

(a) Purpose. -- This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. -- The following definitions apply in this section:

(1) Mediated settlement conference. -- A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.

(2) Mediator. -- A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. -- The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted in so far as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. -- The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. -- The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

(f) Sanctions. -- Upon failure of a party or a party's attorney to attend a mediated settlement conference ordered under this section, the presiding administrative law judge may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

(g) Standards. -- Mediators authorized to conduct mediated settlement conferences under this section shall comply with the standards adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(h) Immunity. -- A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of

Justice.

(i) Costs. -- Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervenor, unless otherwise apportioned by the administrative law judge.

(j) Inadmissibility of Negotiations. -- All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(k) Right to Hearing. -- Nothing in this section restricts the right to a contested case hearing.

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) Repealed by Session Laws 1991, c. 35, s. 2, effective October 1, 1991.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

§ 150B-27. Subpoena.

After the commencement of a contested case, subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon a motion, the administrative law judge may quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed.

Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial

notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

§ 150B-32. Designation of administrative law judge.

(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1 (15), effective July 15, 1986.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.

§ 150B-34. Recommended decision or order of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) Repealed by Session Laws 1991, c. 35, s. 6, effective October 1, 1991.

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will

make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25, effective August 14, 1987.

(6) The administrative law judge's recommended decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party.

Article 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing agencies;

(2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and

(3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

§ 150B-39. Depositions; discovery; subpoenas.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) In preparation for, or in the conduct of, a contested case subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy. If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings.

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

§ 150B-42. Final agency decision; official record.

(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge.

§ 150B-45. Procedure for seeking review; waiver.

To obtain judicial review of a final decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a

recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record.

§ 150B-50. Review by superior court without jury.

The review by a superior court of agency decisions under this Chapter shall be conducted by the court without a jury.

§ 150B-51. Scope of review.

(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

Article 5.

Publication of Administrative Rules.

Repealed.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

DLP:GS:RA:emr
DJ 166-012-3
95-1826

August 22, 1995

Robert W. Oast, Jr., Esq.
County Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Oast:

This refers to the nine annexations (Ordinance Nos. 94-19, 25, 26, 36, 38, 41, and 45 to 47) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on June 23, 1995.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Elizabeth Johnson
Acting Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules cited as 10 NCAC 14V .0101 - .0104, .0201 - .0208, .0301 - .0304, .0401 - .0405, .0501 - .0505, .0601 - .0607, .0701 - .0713, .0801 - .0805, .1101 - .1103, .1201 - .1203, .1301 - .1304, .1401 - .1403, 1501 - 1504, .2101 - .2104, .2201 - .2204, .2301 - .2306, .2401 - .2404, .2501 - .2505, .3101 - .3103, .3201 - .3203, .3301 - .3303, .3401 - .3403, .3501 - .3503, .3601 - .3604, .3701 - .3703, .3801 - .3803, .3901 - .3903, .4001 - .4003, .4101 - .4104, .4201 - .4203, .5001 - .5003, .5101 - .5104, .5201 - .5204, .5301 - .5303, .5401 - .5403, .5501 - .5503, .5601 - .5603, .5701 - .5703, .5801 - .5804, .5901 - .5903, .6001 - .6003, .6101 - .6103, .6201 - .6202, .6301 - .6303, .6401 - .6403, .6501 - .6503, .6601 - .6603, .6701 - .6702, .6801 - .6802, .6901 - .6903.

Proposed Effective Date: *May 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 13, 1995 at the Brownestone Hotel, 1707 Hillsborough Street, Raleigh, NC 27605, (Phone: 919-828-0811).*

Reason for Proposed Action: *These Rules were originally published in Volume 10, Issue 7 of the North Carolina Register (July, 1995) and are being republished to indicate changes that have been incorporated based on comments received before and during the public hearing on August 7, 1995.*

Please Note: Underlining reflects new content, and overstriking reflects content which has been deleted. The entire set of proposed rules are being republished for the convenience of the reader.

Comment Procedures: *Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919) 733-4774. Written comments will be accepted through November 12, 1995, and must state the rules to which the comments are addressed. These comments should be sent to Charlotte Tucker at the above address. Please provide 35 copies of the comments for distribution at the hearing. Time limits for oral remarks may be imposed at the hearing. Fiscal information regarding these Rules is available from the Division upon request.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0100 - GENERAL INFORMATION

.0101 SCOPE

(a) This Subchapter sets forth Rules for mental health, developmental disability and substance abuse services, the facilities and ~~contract~~ agencies providing such services, and the area programs administering such services within the scope of G.S. 122C.

(b) These Rules and the applicable statutes govern licensing of facilities and accreditation of programs and services.

(1) Facilities are licensed by the Division of Facilities Services (DFS) in accordance with G.S. 122 and these Rules. Licensable facilities as defined in G.S. 122C-3 shall comply with these Rules to receive and maintain the licenses required by the statute.

(2) Area programs are accredited by the Division of Mental Health, Developmental Disability, and Substance Abuse Services (DMH/DD/SAS) to provide services ~~on a service by service basis~~ in accordance with these Rules. Area programs ~~and their contract agencies~~ shall comply with the Rules to maintain accreditation of their programs and services.

(c) Unless otherwise provided in these ~~Rules, Except as provided in Paragraph (d) of this Rule,~~ when a facility or area program contracts with a person to provide services within the scope of these Rules, the facility or area program shall require that the contract services be provided in accordance with these Rules, and that the service provider be licensed if it is a licensable facility. ~~or accredited by the area program if it is a contract agency providing area program services.~~

~~(d) Fee for service contracts with an individual or group of individuals licensed under other provisions of state law do not require licensing or accreditation under this section, however, the contracts shall specify that services be documented as required by these Rules.~~

(d) These Rules are organized in the following manner:

(1) General Rules governing mental health, developmental disability and substance abuse services are contained in Sections .0100 through .0900. These Rules are "core" Rules that, unless otherwise specified, apply to all programs and facilities.

(2) Service-specific Rules are contained in Sections .1000 through .6900. Generally, Rules related

to service-specific facilities and services are grouped:

(A) .1000 - .1900: Mental Health

(B) .2000 - .2900: Developmental Disabilities

(C) .3000 - .4900: Substance Abuse

(D) .5000 - .6900: Services and Facilities for More Than One Disability.

(3) Service-specific Rules may modify or expand the requirements of core Rules.

(e) Failure to comply with these Rules shall be grounds for DFS to deny or revoke a license or for DMH/DD/SAS to deny or revoke area program service accreditation.

Statutory Authority G.S. 122C-23; 122C-24; 122C-26; 143B-147.

.0102 COPIES OF RULES

Copies of these Rules are available from DMH/DD/SAS at a price to cover printing, handling and postage.

Statutory Authority G.S. 122C-23; 122C-24; 122C-26; 143B-147.

.0103 GENERAL DEFINITIONS

(a) This Rule contains definitions that apply to all of the Rules in this Subchapter.

(b) Unless otherwise indicated, the following terms shall have the meanings specified:

(1) "Accreditation" means the authorization granted to an area program by DMH/DD/SAS, as a result of demonstrated compliance with the standards established in these Rules, to provide specified services. ~~designation given a service by DMH/DD/SAS, an area program, or an approved accreditation body, indicating compliance with the standards for accreditation established in these Rules.~~

(2) "Administering medication" means direct application of a drug to the body of a client by injection, inhalation, ingestion, or any other means.

(3) "Adolescent" means a minor from 13 through 17 years of age.

(4) "Adult" means a person 18 years of age or older or a person under 18 years of age who has been married or who has been emancipated by a court of competent jurisdiction or is a member of the armed forces.

(5) "Alcohol abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance and which continues despite adverse consequences. The criteria for alcohol abuse delineated in the DSM IV ~~published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty-nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty-four dollars and ninety-five cents ($54.95) for the hard cover edition,~~ is incorporated by reference. ~~This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

(6) "Alcohol dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences. The criteria for alcohol dependence delineated in the DSM IV ~~published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty-nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty-four dollars and ninety-five cents ($54.95) for the hard cover edition~~ is incorporated by reference. ~~This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

(7) "Area program" means a legally constituted public agency providing mental health, developmental disabilities and substance abuse services for a catchment area designated by the commission. For purposes of these Rules, the term "area program" means the same as "area authority" as defined in G.S. 122C-3.

(8) "Assessment" means a procedure for determining the nature and extent of the need for which the individual is seeking service.

(9) "Child" means a minor from birth through 12 years of age.

(10) "Children and adolescents with emotional disturbance" means minors from birth through 17 years of age who have behavioral, mental, or emotional problems which are severe enough to significantly impair their ability to function at home, in school, or in community settings.

(11) "Client" means the same as defined in G.S. 122C-3. When used in the context of consent, consultation, or other function for a minor or for an adult who lacks the capacity to perform the required function, unless otherwise specified the term "client" shall include the legally responsible person.

(12) "Client record" means a documented account~~,~~ ~~which may be written, computerized, etc.,~~ of all services provided to a client. ~~from the time of admission of the client by the facility until discharge from the facility.~~

(13) "Commission" means the same as defined in G.S. 122C-3.

(14) "Contract agency" means a legally constituted entity with which the area program contracts for a service exclusive of intermittent purchase of service for an individually identified client.

(15) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(16) "Detoxification" means the physiological withdrawal of an individual from alcohol or other drugs in order that the individual can participate in rehabilitation activities.

(17) "DFS" means the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.

(18) "Direct care staff" means an individual who provides active direct care, treatment, rehabilitation or habilitation services to clients.

(19) "Division Director" means the Director of DMH/DD/SAS.

(20) "DMH/DD/SAS" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603.

(21) "Documentation" means provision of written or electronic, dated and authenticated evidence of the delivery of client services or compliance with statutes or Rules, e.g., entries in the client record, policies and procedures, minutes of meetings, memoranda, reports, schedules, notices and announcements.

(22) "Drug abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance which continues despite adverse consequences. The criteria for drug abuse delineated in the DSM IV ~~published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety five cents ($34.95) for the soft cover edition and fifty four dollars and ninety five cents ($54.95) for the hard cover edition~~ is incorporated by reference. ~~This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

(23) "Drug dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences. The criteria for drug dependence delineated in the DSM IV ~~published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety five cents ($34.95) for the soft cover edition and fifty four dollars and ninety five cents ($54.95) for the hard cover edition~~ is incorporated by reference. ~~This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

(24) "DSM IV" means the publication of that title published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition. Where used in these definitions, incorporation by reference of DSM IV includes subsequent amendments and editions of the referenced material.

(25) "DWI" means driving while impaired, as defined in G.S. 20-138.1.

(26) "Evaluation" means an assessment service that provides for an appraisal of a client in order to determine the nature of the client's problem and his need for services. The services may include an assessment of the nature and extent of the client's problem through a systematic appraisal of mental, psychological, physical, behavioral, functional, social, economic, and/or intellectual resources, ~~which identifies the nature and extent of an individual's need, through a systematic appraisal,~~ for the purposes of diagnosis and determination of the disability of the client, the client's level of eligibility, ~~individual~~ and the most appropriate plan, if any, for services.

(27) "Facility" means the same as defined in G.S. 122C-3.

(28) "Foster parent" means an individual who provides substitute care for a planned period for a child when his own family or legal guardian cannot care for him; and who is licensed by the N.C. Department of Human Resources and supervised by the County Department of Social Services, or by a private program licensed or approved to engage in child care or child placing activities.

(29) "Governing body" means, in the case of a corporation, the board of directors; in the case of an area authority, the area board; and in all other cases, the owner of the facility.

(30) "Habilitation" means the same as defined in G.S. 122C-3.

(31) "Hearing" means, unless otherwise specified, a contested case hearing under G.S. 150B, Article 3.

(32) "Incident" means any happening which is not consistent with the routine operation of a facility or service or the routine care of a client and that

is likely to lead to adverse effects upon a client.

(33) "Infant" means an individual from birth to one year of age.

(34) "Individualized education program" means a written statement for a child with special needs that is developed and implemented pursuant to 16 NCAC 2E .1500 (Rules Governing Programs and Services for Children with Special Needs) available from the Department of Public Instruction.

(35) "Inpatient service" means a service provided in a hospital setting on a 24-hour basis under the direction of a physician. The service provides continuous, close supervision for individuals with moderate to severe mental or substance abuse problems.

(36) "Legend drug" means a drug that cannot be dispensed without a prescription.

(37) "License" means a permit to operate a facility which is issued by DFS under G.S. 122C, Article 2.

(38) "Medication" means a substance recognized in the official "United States Pharmacopoeia" or "National Formulary" intended for use in the diagnosis, mitigation, treatment or prevention of disease.

(39) "Minor" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.

(40) "Operator" means the designated agent of the governing body who is responsible for the management of a licensable facility.

(41) "Outpatient service" means the same as periodic service.

(42) "Parent" means the legally responsible person unless otherwise clear from the context.

(43) "Periodic service" means a service provided on an episodic basis, either regularly or intermittently, through short, recurring visits for persons with mental illness, developmental disability or who are substance abusers.

(44) "Preschool age child" means a child from three to five years old.

(45) "Prevailing wage" means the wage rate paid to an experienced worker who is not disabled for the work to be performed.

(46) "Private facility" means a facility not operated by or under contract with an area program.

(47) "Provider" means an individual, agency or organization that provides mental health, developmental disabilities or substance abuse services.

(48) "Rehabilitation" means training, care and specialized therapies undertaken to assist a client to reacquire or maximize any or all lost skills or functional abilities.

(49) "Residential service" means a service provided in a 24-hour living environment in a non-hospital setting where room, board, and supervision are an integral part of the care, treatment, habilitation or rehabilitation provided to the individual.

(50) "School aged children" means children from six through twenty-one years of age.

(51) "Screening" means an assessment service that provides for an appraisal of an individual who is not a client in order to determine the nature of the individual's problem and his need for services. The service may include an assessment of the nature and extent of the individual's problem through a systematic appraisal of mental, psychological, physical, behavioral, functional, social, economic, and/or intellectual resources, for the purposes of diagnosis and determination of the disability of the individual, level of eligibility, if the individual will become a client, and the most appropriate plan, if any, for services. ~~a service which provides for a brief appraisal of each individual who presents himself for services, in order to determine the nature of the individual's problem and his need for services. Screening may also include referral to other appropriate community resources.~~

(52) "Secretary" means the Secretary of the Department of Human Resources or designee.

(53) "Service" means an activity or interaction intended to benefit another, with, or on behalf of, an individual who is in need of assistance, care, habilitation, intervention, rehabilitation or treatment.

(54) "Service plan" means the same as treatment/habilitation plan defined in this Section.

(55) "Staff member" means any individual who is employed by the facility.

(56) "State facility" means the term as defined in G.S. 122C.

(57) "Support services" means services provided to enhance an individual's progress in his primary treatment/habilitation program.

(58) "System of care" means a spectrum of community based mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of emotionally disturbed children and adolescents.

(59) "Toddler" means an individual from one through two years of age.

(60) "Treatment" means the process of providing for the physical, emotional, psychological and social needs of clients through services.

(61) "Treatment/habilitation plan" means a plan in which one or more professionals, privileged in accordance with the governing body's policy, working with the client and family members or other service providers, document which services ~~interventions~~ will be provided and the goals, objectives and strategies that will be implemented to achieve the identified outcomes. ~~followed in providing services to the client~~. A treatment plan may also be called a service plan.

(62) "Twenty-four hour service" means a service which is provided to a client on a 24-hour continuous basis.

Statutory Authority: G.S. 122C-3; 122C-26; 143B-147.

.0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

(1) "Certified counselor" means a counselor who is certified as such by the North Carolina Counseling Association as Licensed Professional Counselors (LPC).

(2) "Certified alcoholism counselor (CAC) ~~(CSAC)~~" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(3) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(4) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(5) "Clinical" means having to do with the active direct treatment/habilitation of a client.

(6) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.

(7) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.

(8) "Clinical social worker" means a social worker who is licensed as such by the N.C. Board of Social Work.

(9) "Licensed Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.

(10) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.

(11) "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.

(12) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.

(13) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.

(14) "Qualified alcoholism professional" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.

(15) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.

(16) "Qualified developmental disabilities professional" means an individual who is:

(a) a graduate of a college or university with a baccalaureate degree in a discipline related to developmental disabilities and at least one year of supervised habilitative experience in working with individuals with developmental disabilities; ~~in a human service related field with documentation of at least one year of supervised experience in developmental disabilities~~;

(b) a graduate of a college or university with a baccalaureate degree in a human service related field ~~discipline related to developmental disabilities~~ and at least two years of supervised habilitative experience in working with individuals with developmental disabilities; or

(c) a graduate of a college or university with a baccalaureate degree in a field other than one related to developmental disabilities and in a discipline related to developmental disabilities

and ~~having~~ at least three years of supervised habilitative experience in working with individuals with developmental disabilities.

(17) "Qualified drug abuse professional" means an individual who is:

(a) certified as such by the North Carolina Substance Abuse Professional Certification Board;

(b) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of drug abuse counseling; or

(c) a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.

(18) "Qualified mental health professional" means an individual who is:

(a) psychiatric nurse, practicing psychologist, or a psychiatric social worker;

(b) graduate of a college or university with an advanced degree in a related human service field and two years of supervised clinical experience in mental health services; or

(c) a graduate of a college or university with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.

(19) "Qualified substance abuse professional" means an individual who is:

(a) certified as such by the North Carolina Substance Abuse Professional Certification Board; or

(b) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of alcoholism and drug abuse counseling; or

(c) a graduate of a college or university with a baccalaureate in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.

Statutory Authority G.S. 122C-3; 122C-26; 143B-147.

SECTION .0200 - OPERATION AND MANAGEMENT RULES

.0201 GOVERNING BODY POLICIES

(a) The governing body responsible for each facility or service shall develop and implement written policies for the following:

(1) delegation of management authority for the operation of the facility and services;

(2) criteria for admission;

(3) criteria for discharge;

(4) admission assessments, including:

(A) who will perform the assessment; and

(B) time frames for completing assessment.

(5) client record management, including:

(A) persons authorized to document;

(B) transporting records;

(C) safeguard of records against loss, tampering, defacement or use by unauthorized persons;

(D) assurance of record accessibility to authorized users at all times; and

(E) assurance of confidentiality of records.

(6) screenings, which shall include:

(A) an assessment of the individual's presenting problem or need;

(B) an assessment of whether or not the facility can provide services to address the individual's needs; and

(C) the disposition, including referrals and recommendations;

(7) quality assurance / quality improvement activities, including:

(A) composition and activities of a quality assurance / quality improvement committee;

(B) written quality assurance / quality improvement plan;

(C) methods for monitoring and evaluating the quality and appropriateness of client care, including delineation of client outcomes and utilization of services;

(D) professional or clinical supervision, including a requirement that staff who are not qualified professionals and provide direct client services shall be supervised by a qualified professional in that area of service;

(E) strategies for improving client care;

(F) review of staff qualifications and a determination made to grant treatment/habilitation privileges;

(G) review of all fatalities of active clients who were being served in area-operated or contracted residential programs at the time of death;

(8) use of medications by clients in accordance with the Rules in this Section;

(9) reporting of any incident, unusual occurrence or medication error;

(10) voluntary non-compensated work performed by a client;

(11) client fee assessment and collection practices;

(12) medical preparedness plan to be utilized in a medical emergency;

(13) authorization for and follow up of lab tests;

(14) transportation, including the accessibility of emergency information for a client;

(15) services of volunteers, including supervision and

requirements for maintaining client confidentiality;

(16) areas in which staff, including nonprofessional staff, receive training and continuing education;

(17) safety precautions and requirements for facility areas including special client activity areas; and

(18) client grievance policy, including procedures for review and disposition of client grievances.

(b) Minutes of the governing body shall be permanently maintained.

Statutory Authority G.S. 122C-26; 143B-147.

.0202 PERSONNEL REQUIREMENTS

(a) All facilities or services shall require that applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

(b) Staff of a facility or a service shall be currently licensed, registered or certified, as appropriate to the services which are provided in accordance with applicable NC State Laws.

(c) A personnel record shall be maintained for each individual employed indicating the training, experience, and other qualifications for the position, including verification appropriate to licensure, registration or certification.

(d) Continuing education shall be documented.

(e) Orientation programs shall be provided.

(f) Staff training shall include training in infectious diseases and blood-borne pathogens.

(g) At least one staff member in a facility who is trained in basic first aid, cardiopulmonary resuscitation, seizure management, and the Heimlich maneuver or other approved Red Cross first aid techniques for relieving airway obstruction shall be available at all times.

(h) The governing body may require medical statements, and it shall require medical statements from all direct care providers except those in facilities that provide only periodic services. When in these Rules, a medical statement is required, the following minimums apply:

(1) The staff member shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician, nurse practitioner, or physician's assistant.

(2) The medical statement may be in any written form but shall be signed by the physician, nurse practitioner, or physician's assistant and indicate the general good physical and mental health of the individual, ~~and the~~ absence of any indication of lack of evidence of active tuberculosis and communicable diseases, or any other condition that poses a threat to clients.

(3) The facility or program shall keep the most recent medical statement on file.

Statutory Authority G.S. 122C-26; 143B-147.

.0203 ASSESSMENT AND TREATMENT/ HABILITATION OR SERVICE PLAN

(a) An assessment shall be completed for a client, according to governing body policy, prior to the delivery of services, and shall include, but not be limited to:

(1) the client's presenting problem;

(2) the client's needs and strengths;

(3) a provisional or admitting diagnosis with an established diagnosis determined within 30 days of admission, except that a client admitted to a detoxification or other 24-hour medical program shall have an established diagnosis upon admission;

(4) a pertinent social, family, and medical history ~~within 30 days~~; and

(5) evaluations or assessments, such as psychiatric, substance abuse, medical, and vocational, as appropriate to the client's needs.

(b) when services are provided prior to the establishment and implementation of the ~~comprehensive~~ treatment/habilitation or service plan, hereafter referred to as the plan, strategies to address the client's presenting problem ~~treatment/habilitation or service objectives~~ shall be documented.

(c) The ~~treatment/habilitation or service~~ plan shall be developed based on the assessment, and in partnership with the client and/or legally responsible person, within 30 days of admission for clients who are expected to receive services beyond 30 days.

(d) The ~~treatment/habilitation or service~~ plan shall include:

(1) client outcome(s) that are anticipated to be achieved by provision of the service and a projected date of achievement ~~time specific measurable goals for treatment / habilitation or service delivery~~;

(2) strategies ~~or procedures to meet the goals~~;

(3) staff responsible ~~for the implementation of specific goals; and~~

(4) a schedule for review of the plan at least annually in consultation with the client and/or legally responsible person.

(5) basis for evaluation or assessment of goal objective achievement; and

(6) written consent or agreement by the client or responsible party, or a written statement by the provider stating why such consent could not be obtained.

Statutory Authority G.S. 122C-26; 130A-144; 130A-152; 143B-147.

.0204 CLIENT RECORDS

A client record shall be maintained for each individual admitted to the facility, which shall contain, but need not be

limited to:

(1) an identification face sheet which includes:
  (a) name (last, first, middle, maiden);
  (b) client record number;
  (c) date of birth;
  (d) race, gender and marital status;
  (e) admission date;
  (f) discharge date;

(2) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to DSM IV ~~Diagnostic and Statistical Manual for Mental Disorders (DSM IV)~~;

(3) documentation of the ~~assessment and~~ screening and assessment;

(4) treatment/habilitation or service plan;

(5) emergency information for each client which shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the client's preferred physician;

(6) a signed statement from the client or legally responsible person granting permission to seek emergency care from a hospital or physician;

~~(7) documentation of progress or observations;~~

(7) documentation of services provided ~~to address the needs~~;

(8) documentation of progress toward outcomes;

(9) if applicable:
  (a) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);
  (b) medication orders;
  (c) orders and copies of lab tests; and
  (d) documentation of medication and administration errors and adverse drug reactions.

Statutory Authority G.S. 122C-26; 143B-147.

.0205 EMERGENCY PLANS AND SUPPLIES

(a) A written fire plan for each facility and area-wide disaster plan shall be developed ~~for each facility~~ and shall be approved by the appropriate local ~~fire~~ authority.

(1) The plan shall be made available to all staff and evacuation procedures and routes shall be posted in the facility.

(2) Fire and disaster drills in a 24-hour facility shall be held at least quarterly and shall be repeated for each shift. Drills shall be conducted under conditions that simulate fire emergencies.

(b) Each facility shall have basic first aid supplies accessible for use.

Statutory Authority G.S. 122C-26; 143B-147.

.0206 CLIENT SERVICES

(a) Facilities that provide activities for clients shall assure that:

(1) space and supervision is provided to ensure the safety and welfare of the clients;

(2) activities are suitable for the ages, interests, and treatment/habilitation needs of the clients served; and

(3) clients participate in planning or determining activities.

(b) Facilities or programs designated or described in these Rules as "24-hour" shall make services available 24 hours a day, every day in the year, unless otherwise specified in the Rule.

(c) Facilities that serve or prepare meals for clients shall ensure that the meals are nutritious.

(d) When clients who have a physical handicap are transported, the vehicle shall be equipped with secure adaptive equipment.

(e) When two or more preschool children who require special assistance with boarding or riding in a vehicle are transported in the same vehicle, there shall be one adult, other than the driver, to assist in supervision of the children.

(f) Any client services provided by individuals who do not meet the criteria for a qualified professional as defined in these Rules shall be supervised by a qualified professional.

Statutory Authority G.S. 122C-26; 122C-112; 122C-146; 130A-361; 143B-147; 150B-14(c).

.0207 MEDICATION REQUIREMENTS

(a) Medication dispensing:

(1) Medications shall be dispensed only on the written order of a physician or other practitioner licensed to prescribe.

(2) Dispensing is restricted to registered pharmacists, physicians, or other health care practitioners authorized by law and registered with the North Carolina Board of Pharmacy. If a permit to operate a pharmacy is not required, a nurse or other designated person can assist a physician or other health care practitioner with dispensing so long as the final label, container, and its contents are physically checked and approved by the authorized person prior to dispensing ~~pharmacist or physician~~.

(3) Methadone for take-home purposes may be supplied to a client of a methadone treatment service in a properly labeled container by a registered nurse employed by the service, pursuant to the requirements of 10 NCAC 45G .0306 SUPPLYING OF METHADONE IN TREATMENT PROGRAMS BY RN. Supplying of methadone is not considered dispensing.

(4) Other than for emergency use, facilities shall not possess a stock of prescription legend drugs for the purpose of dispensing without hiring a

pharmacist and obtaining a permit from the NC Board of Pharmacy. Physicians are permitted to keep a small locked supply of prescription drug samples. Samples shall be dispensed, packaged, and labeled in accordance with state law and this Rule.

(b) Medication packaging and labeling:

(1) Non-prescription drug containers not dispensed by a pharmacist shall retain the manufacturer's label with expiration dates clearly visible;

(2) Prescription medications, whether purchased or obtained as samples, shall be dispensed in tamper-resistant packaging that will minimize the risk of accidental ingestion by children. Such packaging includes plastic or glass bottles/vials with tamper-resistant caps, or in the case of unit-of-use packaged drugs, a zip-lock plastic bag may be adequate;

(3) The packaging label of each prescription drug dispensed must include the following:

(A) the client's name;

(B) the prescriber's name;

(C) the current dispensing date;

(D) clear directions for self-administration;

(E) the name, strength, quantity, and expiration date of the prescribed drug; and

(F) the name, address, and phone number of the pharmacy or dispensing location (e.g., mh/dd/sa center), and the name of the dispensing practitioner.

(c) Medication administration:

(1) Prescription or non-prescription drugs shall only be administered to a client on the written order of a person authorized by law to prescribe drugs.

(2) Medications shall be self-administered by clients only when authorized in writing by the client's physician.

(3) Medications, including injections, shall be administered only by licensed persons, or by unlicensed persons trained by a registered nurse, pharmacist or other legally qualified person and privileged to prepare and administer medications.

(4) A Medication Administration Record (MAR) of all drugs administered to each client must be kept current. ~~Any administration of~~ Medications administered shall be recorded immediately after administration, ~~but before the next routine administration time, indicating each dose administered~~. The MAR is to include the following:

(A) client's name;

(B) name, strength, and quantity of the drug;

(C) instructions for administering drug;

(D) date and time drug is administered; and

(E) name or initials of person administering the drug.

(5) Client requests for medication changes or checks will be recorded and kept with the MAR file followed up by appointment or consultation with a physician.

(d) Medication disposal:

(1) All prescription and non-prescription medication shall be disposed of in a manner that guards against diversion or accidental ingestion.

(2) Non-controlled substances shall be disposed of by incineration, flushing into septic or sewer system, or by transfer to a local pharmacy for destruction. A record of the medication disposal shall be maintained by the program. Documentation shall specify the client's name, medication name, strength, quantity, disposal date and method, the signature of the person disposing of medication, and the person witnessing destruction.

(3) Controlled substances shall be disposed of in accordance with the North Carolina Controlled Substances Act, G.S. Chapter 90, Article 5, including any subsequent amendments ~~Chapter 90 of the North Carolina General Statutes~~.

(4) Upon discharge of a patient or resident, the remainder of his or her drug supply shall be disposed of promptly unless it is reasonably expected that the patient or resident shall return to the facility and in such case, the remaining drug supply should not be held for not more that 30 calendar days after the date of discharge.

(e) Medication Storage:

(1) All medication shall be stored:

(A) in a securely locked cabinet in a clean, well-lighted, ventilated room between 59 o and 86 o F.;

(B) in a refrigerator, if required, between 36 o and 46 o F. If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container;

(C) separately for each client;

(D) separately for external and internal use;

(E) in a secure manner if approved by a physician for a client to self-medicate.

(2) Each facility that maintains stocks of controlled substances shall be currently registered under the North Carolina Controlled Substances Act and shall be in compliance with the North Carolina Controlled Substances Act, G.S. Chapter 90, Article 5, including any subsequent amendments ~~Chapter 90 of the North Carolina General Statutes, Article 5, North Carolina Controlled Substances Act adopted by reference to include any subsequent amendments or editions~~.

(f) Medication review:

(1) If the client receives psychotropic drugs, the governing body or operator is responsible for

obtaining a review of each client's drug regimen at least every six months. The review is to be performed by a pharmacist or physician other than the prescribing physician. The on-site manager must assure that the client's physician is informed of and acknowledges ~~the results of~~ the review recommendations when medical intervention is indicated.

(2) The findings of the drug regimen review should be recorded in the client record along with corrective action, if applicable.

(g) Medication education:

(1) Each client started or maintained on a medication by an area program physician shall receive either oral or written education regarding the prescribed medication by the physician or his/her designee. In instances where the ability of the client to understand the education is questionable, a responsible person shall be provided either oral or written instructions on behalf of the client.

(2) The medication education provided shall be sufficient to enable the client or other responsible person to make an informed consent, to safely administer the medication and to encourage compliance with the prescribed regimen.

(3) The area program physician or designee shall document in the client record that education for the prescribed psychotropic medication was offered and either provided or declined. If provided, it shall be documented in what manner it was provided (either orally or written or both) and to whom (client or responsible person).

(h) Medication errors. Drug administration errors and significant adverse drug reactions must be reported immediately to a physician or pharmacist. An entry of the drug administered and the drug reaction must be properly recorded in the drug record. A client's refusal of a drug must be charted. In addition, drug administration errors must be reported as follows:

(1) Within 24 hours to the supervisor of the staff member administering the drug.

(2) Within 72 hours to the area director.

(3) Within 90 days to the Client Rights Committee.

(4) At least quarterly to the area program board.

Statutory Authority G.S. 90-21.5; 90-171.20(7) (8) ; 90-171.44; 122C-26; 143B-147.

.0208 RESEARCH REVIEW BOARD

(a) For purposes of this Rule, "research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove a hypothesis, or to explicate some principle or effect. The term "research" as used here means research which is not standard or conventional; involves a trial or special observation which would place the subject at risk for injury (physical, psychological or social injury), or increase the chance of disclosure of treatment; utilizes elements or steps not ordinarily employed by qualified professionals treating similar disorders of this population; or is a type of procedure that serves the purpose of the research only and does not include treatment designed primarily to benefit the individual.

(b) Prior to the initiation of any research activity in a facility which involves clients or client records, it shall be reviewed and approved by a research review board recognized by the facility in which the proposed research is to be conducted.

(c) The board shall consist of at least three members, the majority of whom are not directly associated with the research proposal which is under consideration.

(d) Each proposed research project shall be presented to the research review board as a written protocol including, at least, the following information:

(1) name of the project and the principal investigator;

(2) statement of objectives (hypothesis) and rationale; and

(3) description of the methodology, including informed consent if necessary.

(e) The board shall assure that informed, written consent is obtained from each client, or each legally responsible person if the client is a minor or incompetent adult, in each research project, to include:

(1) documentation that the client has been informed of any potential dangers that may exist and that he understands the conditions of participation; and

(2) notice of the client's right to terminate participation at any time without prejudicing the treatment he is receiving.

A copy of the dated, signed consent form shall be kept on file in the client record by the facility.

(f) Each approved research project shall be reviewed by the research review board at least annually. Significant modifications in the research protocol shall be reviewed and approved in advance by the research review board.

(g) Minutes of each research board meeting shall be maintained.

Statutory Authority G.S. 122C-26; 122C-52; 143B-147.

SECTION .0300 - PHYSICAL PLANT RULES

.0301 COMPLIANCE WITH BUILDING CODES

(a) Each new facility shall be in compliance with all applicable portions of the North Carolina State Building Code in effect at the time of licensing.

(b) Each facility operating under a current license issued by DFS upon the effective date of this rule shall be in compliance with all applicable portions of the North Carolina State Building Code in effect at the time the facility

was constructed or last renovated.

(c) Each facility shall maintain documented evidence of compliance with applicable fire, sanitation and building codes including an annual fire inspection.

Statutory Authority G.S. 122C-26; 143B-147.

.0302 FACILITY CONSTRUCTION/ALTERATIONS/ ADDITIONS

(a) When construction, use, alterations or additions are planned for a new or existing facility, work shall not begin until after consultation with the DFS Construction Section and with the local building and fire officials having jurisdiction.

(b) All required permits and approvals shall be obtained from the appropriate authorities.

(c) Each facility shall comply with the Americans with Disabilities Act.

Statutory Authority G.S. 122C-26; 143B-147.

.0303 LOCATION AND EXTERIOR REQUIREMENTS

(a) Each facility shall be located on a site where:

(1) fire protection is available;

(2) water supply, sewage and solid waste disposal services have been approved by the local health department;

(3) occupants are not exposed to undue hazards and pollutants; and

(4) local ordinances and zoning laws are met.

(b) The site at which a 24-hour facility is located shall have sufficient outdoor area to permit clients to exercise their right to outdoor activity in accordance with the provisions of G.S. 122C-62.

(c) Each facility and its grounds shall be maintained in a safe, clean, attractive and orderly manner and shall be kept free from offensive odor.

(d) Buildings shall be kept free from insects and rodents.

Statutory Authority G.S. 122C-26; 143B-147.

.0304 FACILITY DESIGN AND EQUIPMENT

(a) Privacy: Facilities shall be designed and constructed in a manner that will provide clients privacy while bathing, dressing or using toilet facilities.

(b) Safety: Each facility shall be designed, constructed and equipped in a manner that ensures the physical safety of clients, staff and visitors.

(1) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times.

(2) All mattresses purchased for existing or new facilities shall be fire retardant.

(3) Electrical, mechanical and water systems shall be maintained in operating condition.

(4) All indoor areas to which clients have routine access shall be well-lighted. Lighting shall be adequate to permit occupants to comfortably engage in normal and appropriate daily activities such as reading, writing, working, sewing and grooming.

(c) Comfort Zone: Each 24-hour facility shall provide heating and air-cooling equipment to maintain a comfort range between 68 and 80 degrees Fahrenheit.

(1) This requirement does not apply to therapeutic (habilitative) camps and other 24-hour facilities for six ~~five~~ or fewer clients.

(2) Facilities licensed prior to 10/1/88 shall not be required to add or install cooling equipment if not already installed.

(d) Indoor space requirements: Facilities licensed prior to 10/1/88 shall satisfy the minimum square footage requirements in effect at that time. Unless otherwise provided in these Rules, residential facilities licensed after 10/01/88 shall meet the following indoor space requirements:

(1) Client bedrooms shall have at least 100 square feet for single occupancy and 80 square feet per client when more than one client occupies the bedroom.

(2) Where bassinets and portable cribs for infants are used, a minimum of 40 square feet per bassinet or portable crib shall be provided.

(3) No more than two clients may share an individual bedroom regardless of bedroom size.

(4) In facilities with overnight accommodations for persons other than clients, such accommodations shall be separate from client bedrooms.

(5) No client shall be permitted to sleep in an unfinished basement or in an attic.

(6) In a residential facility licensed under residential building code standards and without elevators, bedrooms above or below the ground level shall be used only for individuals who are capable of moving up and down the steps independently.

(7) Minimum furnishings for client bedrooms shall include a separate bed, bedding, pillow, bedside table, and storage for personal belongings for each client.

(8) Only clients of the same sex may share a bedroom except for children age six or below, and married couples.

(9) Children and adolescents shall not share a bedroom with an adult.

(10) At least one full bathroom for each five or fewer persons including staff of the facility and their family shall be included in each facility.

(11) Each facility, except for a private home provider, shall have a reception area for clients and visitors and private space for interviews and conferences with clients.

(12) The area in which therapeutic and habilitative activities are routinely conducted shall be

separate from sleeping areas.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .0400 - LICENSING PROCEDURES

.0401 LICENSE REQUIRED

(a) No person shall establish, maintain or operate a licensable facility within the meaning of G.S. 122C-3 without first applying for and receiving a license from the Division of Facilities Services ~~DFS~~.

(b) Except for facilities excluded from licensure by G.S. 122C, DFS will deem any facility licensable if its primary purpose is to provide services for the care, treatment, habilitation or rehabilitation of individuals with mental illness, developmental disabilities, or substance abuse disorders.

(c) Living arrangements coordinated for adult clients in connection with case management or personal assistance services are not considered licensable facilities unless their primary purpose is to provide care, treatment, habilitation or rehabilitation, rather than simply to provide living accommodations ~~they have the primary purpose of care, treatment, habilitation or rehabilitation~~.

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 143B-147.

.0402 LICENSE ISSUANCE

(a) Applications for licensure shall be requested and completed in the form specified by DFS at least thirty days prior to the planned operation date of a new facility. Copies of reports, findings or recommendations issued by any accreditation agency and corrective action plans shall be submitted with the application for licensure.

(b) The content of license applications shall include:

(1) Name of person (as defined in G.S. 122-C3) submitting the application;

(2) Business name of facility, if applicable;

(3) Street location of the facility (including multiple addresses if more than one building at one site);

(4) Name and title of the operator of the facility;

(5) Type of facility; services offered; ages served; and, when applicable, capacity and a floor plan showing bed locations and room numbers, any unlocked time-out rooms, and any locked interior or exterior doors which would prohibit free egress of clients; and

(6) Indication of whether the facility is operated by an area program, under contract with an area program, or is a private facility.

(c) DFS shall conduct an on-site inspection to determine compliance with all rules and statutes. If the facility is operated by or contracted with an area program, DFS may, in lieu of conducting an on-site inspection, accept written verification from the area program or DMH/DD/SAS that the verifying authority has conducted an on-site review and the facility is in compliance with rules and statutes. The written verification shall be in such form as DFS may require.

(d) DFS shall issue a license after it determines a facility is in compliance with:

(1) Certificate of Need rules as codified in 10 NCAC 3R .2600;

(2) Building Code and physical plant requirements in these Rules;

(3) Annual fire and safety and sanitation requirements, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and

(4) Applicable rules and statutes.

(e) Licenses shall be issued to the specific premise for types of services indicated on the application.

(f) A separate license shall be required for each facility which is maintained on a separate site, even though the sites may be under the same ownership or management.

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 122C-27(5); 143B-147.

.0403 DEEMED STATUS

(a) A facility may be awarded a deemed status and licensed if it is certified or accredited by a nationally recognized agency which has been approved in advance by the Commission, and it provides verification of certification or accreditation to DFS.

(b) Any facility licensed under this Rule shall continue to be subject to inspection by DFS or by DMH/DD/SAS as provided in these Rules.

Statutory Authority G.S. 122C-22; 122C-26; 131E-67; 143B-17; 143B-147; 150B, Article 3.

.0404 OPERATIONS DURING LICENSED PERIOD

(a) A license shall be valid for a period not to exceed two years from the date on which the license is issued.

(b) For all facilities providing periodic and day/night services, the license shall be posted in a prominent location accessible to public view within the licensed premises.

(c) For 24-hour facilities, the license shall be readily available for review upon request.

(d) A facility shall accept no more clients than the number for which it is licensed.

(e) DFS may conduct inspections of facilities without advance notice as DFS deems appropriate. For facilities that are not operated by or contracted with area programs, and that therefore are not encompassed by the accreditation process, DFS shall conduct an on-site inspection at least once every two years. For purposes of this inspection, DFS may accept DMH/DD/SAS or area program verification in accordance with Rule .0402(c) of this Section, or deemed status in accordance with Rule .0403 of this Section.

(f) Written notification must be submitted to DFS prior to

any of the following:

(1) Construction of a new facility or any renovation of an existing facility;

(2) Increase or decrease in capacity by program service type;

(3) Change in program service;

(4) Change in ownership including any change in a partnership;

(5) Change of name of facility; or

(6) Change in location of facility.

(g) When a licensee plans to close a facility or discontinue a service, written notice at least 30 days in advance shall be provided to DFS, to all affected clients, and when applicable, to the legally responsible persons of all affected clients. This notice shall address continuity of services to clients in the facility.

(h) Licenses will expire unless renewed by DFS for an additional period. Thirty days prior to the expiration of a license, the licensee shall submit to DFS the following information:

(1) Brief description of any changes in the facility since the last written notification was submitted;

(2) Annual local fire and sanitation inspection reports, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and

(3) Copies of deficiencies and corrective action issued by an area program, DMH/DD/SAS, or any accreditation agency.

Statutory Authority G.S. 122C-26; 143B-147.

.0405 LICENSE DENIAL, AMENDMENT OR REVOCATION

(a) Denial: DFS may deny an application for license based on the determination that the applicant is not in compliance with:

(1) rules promulgated under G.S. Chapter 122C, Article 2; or

(2) applicable provisions of the Certificate of Need law under G.S. Chapter 131E, Article 9 and rules adopted under that law.

(b) Notice: When an application for license of a new facility is denied:

(1) DFS shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and

(2) The facility shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: DFS may amend a license to indicate a provisional status whenever DFS determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served.

(1) Provisional status shall be approved for not less than 30 days nor more than six months.

(2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.

(3) A new license, which deletes the provisional status, shall be issued when a facility is determined by DFS to be in compliance with applicable rules.

(4) If a facility fails to comply with the rules within the time frame determined by DFS, the license will automatically terminate on the expiration date of the provisional status.

(5) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless DFS determines that the violations have been corrected.

(6) A decision to issue a provisional status is stayed during the period of an administrative appeal and the licensee may continue to display its license during the appeal.

(d) Revocation: DFS shall revoke a license whenever it finds that there has been any failure to comply with the provisions for G.S. 122C, Article 2, that there have been violations of rules promulgated under those parts, and that such violations endanger the health, safety, or welfare of the individuals in the facility.

(e) Summary Suspension: Should DFS find that public health, safety or welfare considerations require emergency action, DFS shall issue an order of summary suspension and include the findings in its order.

(1) The order shall suspend only those privileges or services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later.

(2) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B. The order for summary suspension shall be in full force and effect during any contested case hearing.

(3) The order also may set a date by which the licensee shall remove the cause for the emergency action. If the licensee fails to meet that deadline, DFS may take action to revoke or amend the facility's license.

Statutory Authority G.S. 122C-24; 122C-26; 122C-27; 143B-147; 150B-3; 12(a); 23-(a)(f); 150B-45.

SECTION .0500 - AREA PROGRAM REQUIREMENTS

.0501 REQUIRED SERVICES

Each area program shall provide and/or contract for the provision of the following services:

(1) Outpatient for Individuals of all Disability Groups;
(2) Emergency for Individuals of all Disability Groups;
(3) Consultation & Education for Individuals of all Disability Groups;
(4) Case Management for Individuals of all Disability Groups;
(5) Inpatient Hospital Treatment for Individuals Who Have Mental Illness or Substance Abuse Disorders;
(6) Psychosocial Rehabilitation for Individuals with Severe and Persistent Mental Illness or Partial Hospitalization Services for Individuals Who are Acutely Mentally Ill;
(7) Developmental Day Services for Preschool Children with or at Risk for Developmental Disabilities or Delays or Atypical Development;
(8) Adult Developmental Activity Programs (ADAP) for Individuals with Developmental Disabilities;
(9) Alcohol and Drug Education Traffic Schools (ADETS);
(10) Drug Education Schools (DES);
(11) Social Setting, Nonhospital Medical, or Outpatient Detoxification Services for Individuals who are Alcoholics;
(12) Forensic Screening and Evaluation for Individuals of all Disability Groups; and
(13) Early Childhood Intervention Services for Children with or at Risk for Developmental Delay, Disabilities, or Atypical Development and Their Families (ECIS).

Statutory Authority G.S. 143B-147.

.0502 AREA PROGRAM/HOSPITAL AGREEMENT

(a) Each area program shall make provisions for inpatient services for individuals with mental illness or substance abuse disorders, including access for both voluntary and involuntary admissions. The area program may provide these services, develop written agreements, or have written referral procedures to a general hospital or private hospital, to ensure that both voluntary and involuntary clients shall have access to needed inpatient services.

(b) A written agreement between the area program and a general hospital or private hospital shall specify at least the following:

(1) criteria for service availability for area program patients;
(2) responsibilities of both parties related to admission, treatment, and discharge of patients;
(3) parties responsible for the operation of the inpatient service;
(4) responsibilities of each party regarding continuity of service for patients discharged from the inpatient service; and
(5) provision for the exchange of information.

(c) When services are provided out of State, the written agreement shall be approved by the DMH/DD/SAS.

Statutory Authority G.S. 143B-147.

.0503 STAFF REQUIREMENTS

Each area program shall employ or contract for the services of a:

(1) psychiatrist;
(2) practicing psychologist;
(3) psychiatric nurse;
(4) psychiatric social worker;
(5) certified alcoholism counselor and certified drug abuse counselor, or at least one certified substance abuse counselor;
(6) qualified developmental disabilities professional; and
(7) qualified client record manager.

Statutory Authority G.S. 122C-121; 122C-154; 122C-155; 143B-147.

.0504 CLIENT RIGHTS COMMITTEE

(a) The area board shall bear ultimate responsibility for the assurance of client rights.

(b) Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop and implement policy which delineates:

(1) composition, size, and method of appointment of committee membership;
(2) training and orientation of committee members;
(3) frequency of meetings;
(4) rules of conduct for meetings and voting procedures to be followed;
(5) procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;
(6) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and
(7) other operating procedures.

(c) The area-board-established Client Rights Committee shall oversee, for area-operated services and area-contracted services, implementation of the following client rights protections:

(1) compliance with G.S. 122C, Article 3;
(2) compliance with the provisions of DMH/DD/SAS publications CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2 and CONFIDENTIALITY RULES, APSM 45-1, adopted in accordance with G.S. 150B-14(c); and

(3) establishment of a review procedure for any of the following which may be brought by a client, client advocate, parent, legally responsible person, staff or others:

(A) client grievances;

(B) alleged violations of the rights of individuals or groups, including cases of alleged abuse, neglect or exploitation;

(C) concerns regarding the use of restrictive procedures; or

(D) failure to provide needed services that are available in the area program.

(d) Nothing herein stated shall be interpreted to preclude or usurp the statutory authority of a county Department of Social Services to conduct an investigation of abuse, neglect, or exploitation or the statutory authority of the Governor's Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client rights.

(e) If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry out the provisions of this Rule for the contract agency.

(f) Each Client Rights Committee shall be composed of a majority of non-area board members, with a reasonable effort made to have all applicable disabilities ~~equally~~ represented, with consumer and family member representation. Staff who serve on the committee shall not be voting members.

(g) The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of its activities with the area board. Clients shall not be identified by name in minutes or in written or oral reports.

(h) ~~An area program which contracts for services shall delineate in the service contract the authority of the area board Client Rights Committee and its relationship to the contract agency.~~ The area board Client Rights Committee shall review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any, made by the contract agency shall be reported to the area director within 30 days of the initial report of the incident, and to the area board within 90 days of the initial report of the incident.

Statutory Authority G.S. 122C-64; 143B-147.

.0505 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES

(a) If an area program plans to operate or contract for a service located within the catchment area of another area program, the Director of the area program that plans to operate or contract for the service shall notify the Director of the area program in which the service is to be located prior to the provision of the service.

(b) The notification shall be in writing and shall include the following:

(1) name of the provider;

(2) service to be provided; and

(3) anticipated dates of service.

In the event of an emergency, notification prior to the provision of service may be by telephone with written notification occurring the next working day.

(c) Should a dispute resolution concerning such service as described in Paragraph (a) of this Rule be necessary, the Division Director shall arbitrate an agreement between the respective area programs.

(d) If the Division plans to operate or contract for a service in an area program, the Division Director shall notify the Director of the area program in which the service is to be located, prior to the provision of the service, according to the procedures set forth in Paragraph (b) of this Rule.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

SECTION .0600 - ACCREDITATION OF AREA PROGRAMS AND SERVICES

.0601 GENERAL

~~(a) All area program direct and contracted services shall be accredited. Direct area program services shall be accredited by DMH/DD/SAS. Contract services shall be accredited by the area program.~~

~~(b) Initial accreditation shall include an on-site review by the accrediting authority. Continuing accreditation shall be maintained by periodic accreditation reviews of area services.~~

~~(c) DMH/DD/SAS funding of area services is contingent upon accreditation. For new services, DMH/DD/SAS may authorize start-up funds pending accreditation.~~

~~(d) DMH/DD/SAS or the area program, as appropriate, may deem a service accredited if the service provides proof that it is certified or accredited by a nationally recognized body approved in advance by DMH/DD/SAS.~~

~~(e) DMH/DD/SAS shall retain the authority to revoke or deny accreditation of area program contract services, with or without the concurrence of the area program, as set forth in Rule .0604 of this Section.~~

(a) For purposes of this Section, "service" means those services described in Sections .1000 through .6900 of these Rules, and offered by an area program, either directly or through a contract provider, as a required or optional service to clients.

(b) Area programs shall be accredited by DMH/DD/SAS to provide specific services according to the Rules in this Section. No area program shall provide a service, either directly or through a contract provider, unless that specific service is accredited, except by reciprocity with another area program pursuant to Rule .0606.

(c) An area program offering an accredited service may modify the means by which it delivers the service, including adding or changing service providers. DMH/DD/SAS may

require an area program to notify it of changes in contract provider status. Changes in providers may constitute a change in circumstances warranting a reexamination of an accredited service pursuant to Rule .0603(e).

(d) Area programs may receive interim accreditation for new services in accordance with Rule .0605. Area programs shall maintain accreditation of services through the Accreditation Review process described in Rules .0602 and .0603.

(e) DMH/DD/SAS funding of services provided by area programs is contingent upon accreditation.

(f) DMH/DD/SAS will no longer accredit contract providers. Area programs retain their statutory obligations to assure that contract providers comply with State law and these Rules, and to monitor the performance of contract providers as required by G.S. 122C.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0602 ACCREDITATION REVIEW

(a) The Area Authority shall assure that all area-operated and contracted services of an area program comply with applicable Federal requirements, General Statutes, and Rules of the Commission, the Secretary and DMH/DD/SAS.

(b) An area program shall be reviewed under the auspices of DMH/DD/SAS periodically, and not less than once every five years.

(c) The Accreditation Review will examine each area program service for:

(1) compliance with applicable rules;
(2) client outcomes;
(3) achieved levels of client satisfaction; and
(4) operational and programmatic performance meeting applicable ~~professional~~ standards of practice ~~in the applicable disciplines~~.

(d) For purposes of the accreditation process, "applicable standards of practice" means a recognized level of competence established with reference to the prevailing and accepted methods, and the degree of knowledge, skill and care exercised, by other practitioners in the same discipline.

(e) Upon completion of the Accreditation Review, DMH/DD/SAS will provide the area authority with an oral summary and written report of results.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0603 ACCREDITATION OF THE AREA PROGRAM

(a) Upon completion of an Accreditation Review, DMH/DD/SAS shall accredit the area program for a period of between one and five years. The length of the accreditation period shall be determined by DMH/DD/SAS based on the results of the review and an evaluation of the area program's current status, planned changes, and anticipated future needs.

(b) ~~Except as specified by DMH/DD/SAS, accreditation of an area program shall constitute accreditation of the area program services that were in operation at the time of the Accreditation Review.~~ DMH/DD/SAS may accredit an area program to provide a specific service for a shorter period of time than the area program's overall accreditation ~~itself~~.

(c) An area program or service accreditation of one year shall be accompanied by the development of corrective action plans for services or operations specified by DMH/DD/SAS. ~~a plan for program or service enhancement developed jointly by the area program and DMH/DD/SAS.~~ These plans shall be developed by the area program, which will submit them to DMH/DD/SAS for approval. These plans are to be developed and implementation begun within ninety days following the accreditation review.

(d) As a condition of accreditation for more than one year, DMH/DD/SAS may require an area program to develop and submit plans ~~a plan~~ for corrective action and ~~program or~~ service enhancement. The scope and time frame for submission of the plans shall be specified by DMH/DD/SAS.

(e) DMH/DD/SAS may ~~schedule and~~ conduct Accreditation Reviews at any time during an accreditation period in the event of significant changes in the membership of the area board, a change in area director, complaints by consumers, consumer organizations and/or advocacy groups, failure to submit acceptable corrective action or service enhancement plans, failure to implement ~~complete~~ required plans, or other occurrences that suggest a change in circumstances warranting a reexamination of the area program, its operations, or one or more of the services it provides ~~an area program's services~~. This review may be a full Accreditation Review of the area program, or it may be limited to selected ~~area program~~ services provided by the area program.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0604 DENIAL OR REVOCATION OF ACCREDITATION

(a) ~~Either~~ DMH/DD/SAS ~~or an area program~~ may deny or revoke accreditation for an area program service:

(1) upon confirmation that a service subject to licensure is not licensed;
(2) upon receipt of evidence of a condition that DMH/DD/SAS ~~or the area program~~ determines is a threat to the health, safety or welfare of an individual served;
(3) upon an area program's ~~service's~~ failure to complete corrective action or service enhancement in accordance with a plan approved by DMH/DD/SAS ~~or the area program as appropriate~~;
~~(4) upon a service's failure to participate in the Accreditation Review;~~
(4) upon determination that:
(A) the services rendered are not provided at a

recognized, established level of competence in the appropriate discipline;

(B) the area program ~~governing body of the service provider~~ has received notice of the deficiencies and a specified time period for remedial action; and

(C) the area program ~~governing body~~ has failed or refused to take appropriate remedial action to bring the service to the required level of competence; or

(5) Upon determination of a pattern of behaviors that over time show a failure to maintain a recognized, established level of competence in the appropriate discipline or show repeated threats to or disregard for the health, safety and welfare of clients.

~~(b) The area program shall promptly notify DMH/DD/SAS of any revocation or denial of accreditation for a service.~~

(b) Upon denial or revocation of accreditation for a service, DMH/DD/SAS shall take appropriate steps to withhold funds for the service pending reaccreditation as set forth in the DMH/DD/SAS Accounting Rules.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0605 INTERIM ACCREDITATION FOR NEW SERVICES

(a) An area program desiring to offer a new service may receive interim accreditation and start-up or interim funding according to the following procedures:

(1) The area program shall notify DMH/DD/SAS in advance of the new service and its anticipated date of commencement, and shall provide such other information as DMH/DD/SAS may specify.

(2) In its notification, the area program shall offer assurances that the service will comply with applicable standards for accreditation.

(b) Upon receipt of notification, DMH/DD/SAS will deem the new service to have received interim accreditation effective as of the anticipated date of commencement. Unless revoked pursuant to Rule .0604 of this Section, interim accreditation will remain in effect until completion of an on-site review of the new service by DMH/DD/SAS.

(c) After the on-site review, DMH/DD/SAS may accredit the new service pursuant to Rule .0603 of this Section for a specified period of time, but not beyond the expiration of the area program accreditation, or it may deny accreditation pursuant to Rule .0604 of this Section.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0606 RECIPROCITY

(a) By agreement between area programs, one area program may place clients with another area program's accredited service to provide that service without obtaining its own accreditation to provide that service.

(b) Nothing herein shall be deemed to relieve any area program of its responsibility to monitor contract service providers pursuant to G.S. § 122C-141 and -142.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

.0607 PURCHASE OF SERVICE AND CAPITATION CONTRACTS

(a) In the case of services provided pursuant to purchase of service or capitation contracts with individuals or groups of individuals licensed under other provisions of state law and who are not facilities requiring licensing under these Rules or G.S. 122C, area programs may exempt the contract providers from complying with the requirements of Section .0200 of these Rules, except for Rules .0203, .0204, .0207, and .0208 of this Subchapter.

(b) For purposes of this Rule, "capitation contract" means a contract in which the provider is paid a specified flat rate per enrollee to meet clients' service needs within the parameters of the contract.

(c) For purposes of this Rule, "purchase of service contract" means a contract in which the provider is paid an agreed-upon rate for a specific service as the service is rendered.

Statutory Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

SECTION .0700 - WAIVERS AND APPEALS

.0701 SUBMISSION OF REQUESTS FOR WAIVERS OF RULES

Requests for waivers shall be sent to the Division Director, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27603.

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0702 CONTENTS OF WAIVER REQUESTS

Except as provided in Rule .0706 of this Section, waiver requests shall be in writing and shall contain:

(1) the name, address and telephone number of the person making the request;

(2) the name, address and telephone number of the facility, program, agency or other entity for which the waiver is requested;

(3) the rule number and title of any rule for which the waiver is requested;

(4) a statement of facts including:

(a) the reason for the request;

(b) the nature and extent of the request; and

(c) confirmation that the health, safety or welfare of

clients will not be threatened;

(5) the time frame for which the waiver is requested; and

(6) authorization for the waiver request and the date of such authorization. If from:

(a) a facility operated by an area program, area board authorization;

(b) a contract agency (of area programs) proof of recommendation by area board and proof of contract agency governing body approval;

(c) a private facility, authorization by the governing body; and

(d) the Department of Correction, Division of Prisons, authorization by the Director of the Division of Prisons.

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0703 PROCEDURE FOR WAIVERS BY COMMISSION

If any rule for which waiver is requested was adopted pursuant to the rule-making authority of the Commission, the procedures set forth in this Rule shall be followed:

(1) The person requesting the waiver shall be notified regarding the time and place of the meeting at which the Commission will vote upon the waiver request. At the discretion of the Chairman of the Commission, the person requesting the waiver and any other interested person may be given the opportunity to speak regarding the waiver request.

(2) Decisions regarding waiver requests shall be based upon, but not limited to, the following:

(a) the nature, extent, and rationale of the request; and

(b) safeguards to ensure that the health, safety or welfare of clients will not be threatened.

(3) The Commission's decision shall be issued in writing by the Chairman of the Commission and shall state:

(a) the factual situation giving rise to the waiver request;

(b) the decision that the waiver request was granted, or granted subject to certain conditions;

(c) the time frame, if the waiver is granted; and

(d) the reason, if the waiver request was denied.

(4) The waiver may be granted retroactively:

(a) to the date of the authorization as described in Item (6) of Rule .0702 of this Section; or

(b) to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0706 of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0704 WAIVERS REQUESTED BY COMMISSION

(a) Any member of the Commission may initiate a request for waiver of any rule adopted pursuant to the rule-making authority of the Commission, or the rule-making authority delegated to the Division Director by the Secretary as described in this Section.

(b) In requesting a waiver on behalf of one or more agencies or services, the Commission member is subject to Subitems ~~(2)~~(a) and (b) of Rule .0706 of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0705 PROCEDURE FOR WAIVERS BY DIVISION DIRECTOR

If the rule for which waiver is requested was adopted pursuant to the rule-making authority delegated to the Division Director by the Secretary, the procedures set forth in this Rule shall be followed:

(1) Decisions regarding waiver requests shall be based upon, but not limited to, the criteria in Item (2) of Rule .0703 of this Section.

(2) A decision regarding the waiver request shall be issued in writing by the Division Director within 60 days from the date of receipt of the waiver request and shall state:

(a) the factual situation giving rise to the waiver request;

(b) the reasons why the request was granted, granted subject to certain conditions, or denied; and

(c) if granted, the time frame for which the waiver is granted.

(3) The waiver may be granted retroactively to the date of the authorization of the governing body as described in Item (6) of Rule .0702 of this Section or to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0706 of this Section.

Statutory Authority G.S. 122C-112(a)(8).

.0706 WAIVERS REQUESTED BY DIVISION DIRECTOR

The Division Director may initiate a request for waiver of rules adopted pursuant to the rule-making authority of the Commission as described in this Section.

(1) Except when requesting a waiver on behalf of one or more agencies or services, the Division Director is exempt from the provisions of Items (2) and (6) of Rule .0702 of this Section.

(2) Instead, the Division Director shall list the types of agencies or services for which the waiver is requested.

Statutory Authority G.S. 122C-112(a)(8).

.0707 SPECIAL REQUESTS

(a) The Commission or Division Director may approve one or more lists of conditions under which an agency may make a special waiver request.

(b) In addition to all Rules of this Section, any agency making a special request for waiver of specified rules shall:

(1) address the relevant list of conditions; and

(2) obtain Division approval of the proposed alternative system of policy and procedures prior to action by either the Commission or Division Director.

(c) The Commission or Division Director may grant or deny waiver of specified rules upon receipt of an agency's special request submitted in accordance with the rules of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0708 APPEALS PROCEDURES FOR CONTRACT PROVIDERS

(a) Pursuant to G.S. 122C-151.3, an area authority shall establish written procedures for the resolution of disputes regarding decisions of an area authority with a contractor, former contractor client or person asserting the claims described in G.S. 122C-151.4.

(b) Decisions may be appealed to the Area Authority Appeals Panel as set forth in this Section.

Statutory Authority G.S. 122C-112; 122C-151.3; 122C-151.4.

.0709 ESTABLISHMENT OF AN AREA AUTHORITY APPEALS PANEL

(a) Pursuant to G.S. 122C-151.4(b), the Area Authority Appeals Panel, hereafter referred to as "the Panel," shall consist of three members who shall:

(1) be appointed by the Division Director and serve at the pleasure of the Secretary; and

(2) have education and experience relevant to the appeals process, as determined by the Division Director.

(b) The Division Director shall appoint the Chairman of the Panel.

(c) Clerical support for the Panel shall be provided by the Division.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0710 PANEL APPEALS PROCEDURES

(a) Appeals of the decision of local area authorities shall be forwarded, along with all supplementary documentation considered during the local area appeals process, to the Division Director within 15 days of the local decision being rendered.

(b) The Division Director shall forward all information to the Chairman of the Panel within five working days.

(c) The Panel shall complete an administrative review and notify the appealing party and the area program of its decision, in writing, within 15 days of receipt of the appeal. Unless further appealed within 15 days of the date of this decision, this decision shall be considered final.

(d) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final by submitting a written request to the Chairman of the Panel within 15 days of the date of the administrative review decision.

(e) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chairman.

(f) The hearing shall be scheduled at a time and place designated by the Chairman.

(g) The appealing party and the area program shall be notified of the time and place of the hearing no less than 15 days prior to the hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0711 HEARING PROCEDURES

(a) The Chairman of the Panel:

(1) will convene the meeting at the prearranged time and place;

(2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;

(3) may limit the total number of persons presenting for the appellant and appellee; and

(4) may impose time limits for presentations.

(b) The official representative of the appellant and appellee shall:

(1) specify by name and position all individuals who will be present for the hearing;

(2) provide the Panel with any requested information; and

(3) if appropriate, ensure that a representative of the appellant and appellee will be available at the hearing to make a presentation.

(c) Any member of the Panel may address questions to the representatives of the appellant or of the appellee.

(d) All persons present at the appeal will address only the Chairman or a specific member of the Panel who has addressed a specific question to that individual.

(e) Direct exchanges between presenters for the appellant and the appellee shall be prohibited.

(f) The Panel may obtain any form of technical assistance or consultation relevant to the appeal.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0712 PANEL DECISIONS

(a) The Panel shall vote in open session on each specific item being appealed.

(b) Within five working days, each decision shall be conveyed in writing to the appealing party and the area authority.

(c) Any decision may be rescheduled for a subsequent meeting if the Panel determines that it lacks sufficient information to render a decision at the initial hearing.

(d) In all cases a final decision shall be rendered within

30 days of the written request for a hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0713 WAIVER OF LICENSURE RULES

(a) the Director of DFS may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on, but not limited to, the following:

(1) the nature and extent of the request;

(2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;

(3) the determination that the waiver will not affect the health, safety, or welfare of clients;

(4) the existence of good cause; and

(5) documentation of area board approval when requests are from area programs and contract agencies of area programs, or documentation of governing body approval when requests are from private facilities not contracting with area programs.

(b) Requests for waivers shall be sent to the Director of DFS, 701 Barbour Drive, Raleigh, North Carolina 27603.

(c) The request shall be in writing and shall contain:

(1) the name, address and telephone number of the requester;

(2) the name, address and telephone number of the facility for which the waiver is requested;

(3) the rule number and title of the rule or requirements for which waiver is being sought;

(4) a statement of facts showing:

(A) reason for, and the nature and extent of, the request; and

(B) that the health, safety or welfare of clients will not be threatened.

(5) documentation of area board approval when requests are from area programs and contract agencies of area programs, or documentation of governing board approval when requests are from private facilities not contracting with area programs.

(d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/DD/SAS; and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the commission, the Director of DMH/DD/SAS shall send a copy of the decision to all commission members.

(f) The decision of the Director of DFS regarding a waiver request may be appealed to the Commission through the contested case process set out in 10 NCAC 14B .0300. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

(g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

Statutory Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147.

SECTION .0800 - GENERAL RULES FOR INFANTS AND TODDLERS

.0801 SCOPE

The Rules in this Section shall apply to any facility which serves infants and toddlers with or at risk for developmental disabilities, delays or atypical development~~, except for respite~~.

Statutory Authority G.S. 122C-26; 143B-147.

.0802 DEFINITIONS

In addition to the definitions contained in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

(1) "Atypical development" in children means those from birth to 60 months of age who:

(a) have autism;

(b) are diagnosed hyperactive;

(c) have an attention deficit disorder or other behavioral disorders; or

(d) exhibit evidence of, or are at risk for, atypical patterns of behavior and social-emotional development in one or more of the following areas:

(i) delays or abnormalities in achieving emotional milestones;

(ii) difficulties with:

(A) attachment and interactions with parents, other adults, peers, materials and objects;

(B) ability to communicate emotional needs;

(C) motor or sensory development;

(D) ability to tolerate frustration and control behavior; or

(E) ability to inhibit aggression;

(iii) fearfulness, withdrawal, or other distress that does not respond to the comforting of caregivers;

(iv) indiscriminate sociability; for example, excessive familiarity with relative strangers;

(v) self-injurious or other aggressive behavior;

(vi) substantiated evidence that raises concern for the child's emotional well-being regarding:

(A) physical abuse;

(B) sexual abuse; or

(C) other environmental situations;

as defined in G.S. 7A-517(1) and (21).

(2) "Developmentally delayed children" means those

whose development is delayed in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication, social and emotional; and adaptive skills. The specific level of delay must be:

(a) for children from birth to 36 months of age, documented by scores one and one-half standard deviations below the mean on standardized tests in at least one of the above areas of development. Or, it may be documented by a 20 percent delay on assessment instruments that yield scores in months; and

(b) for children from 36 to 60 months of age, documented by test performance two standard deviations below the mean on standardized tests in one area of development or by performance that is one standard deviation below the norm in two areas of development. Or, it may be documented by a 25 percent delay in two areas on assessment instruments that yield scores in months.

(3) "Early Intervention Services" means those services provided for infants and toddlers specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published 1/1/92 and incorporated by reference. This adoption by reference includes subsequent amendments and editions of the referenced material, which may be obtained at no cost from the Branch Head, Child and Adolescent Services, Developmental Disabilities Section, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.

(a) For the purposes of these services, "transportation" means assistance in the travel to and from the multidisciplinary evaluation, specified early intervention services provided by certified developmental day centers or other center-based services designed specifically for children with or at risk for disabilities; and speech, physical or occupational therapy, or other early intervention services if provided in a specialized setting away from the child's residence.

(b) Transportation assistance may be provided by staff, existing public or private services, or by the family, who shall be reimbursed for their expenses, in accordance with applicable fee provisions.

(c) For the purposes of these services, "special instruction" means individually designed education and training in the strengths and needs of the child and family as identified in the multidisciplinary evaluation, in which the focus is on the major developmental areas and individual family needs. It occurs in two primary types of settings; home and mainstreamed center-based:

(i) The mainstreamed center-based settings may be those designed primarily for children with or at risk for disabilities, such as developmental day centers or therapeutic preschools, if they allow for planned and ongoing contact with children without disabilities.

(ii) Mainstreamed center-based settings also include those established primarily for children without disabilities, such as preschools, family day care homes, licensed child care centers:

(A) when provided in these programs, special instruction also includes consultation and training for staff on curriculum design, teaching and behavior management strategies, and approaches to modification of the environment to promote learning; and

(B) service coordination activities, including assistance to the family in identifying such programs must be provided with special instruction, if requested by the family.

(4) "Health Services" means those services provided for infants and toddlers specified in Section 303.13 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published 6/22/89 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(5) "High risk children" means those from birth to 36 months of age for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be necessary. There are two categories of high risk children. These are:

(a) High Risk-Established: Diagnosed or documented physical or mental conditions which are known to result in developmental delay or atypical development as the child matures. Such conditions include, but need not be limited to the following:

(i) chromosomal anomaly or genetic disorders associated with developmental deficits;

(ii) metabolic disorders associated with developmental deficits;

(iii) infectious diseases associated with developmental deficits;

(iv) neurologic disorders;

(v) congenital malformations;

(vi) sensory disorders; or

(vii) toxic exposure; or

(viii) severe attachment disorders.

(b) High Risk-Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or postneonatal risk conditions as defined on page 12 in the 1990 publication, "NORTH CAROLINA CHILD SERVICE COORDINATION PROGRAM" available from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material. These conditions are as follows:

(i) maternal age less than 15 years;
(ii) maternal PKU;
(iii) mother HIV positive;
(iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;
(v) parental blindness;
(vi) parental substance abuse;
(vii) parental mental retardation;
(viii) parental mental illness;
(ix) difficulty in parental or infant bonding;
(x) difficulty in providing basic parenting;
(xi) lack of stable housing;
(xii) lack of familial and social support;
(xiii) family history of childhood deafness;
(xiv) maternal hepatitis B;
(xv) birth weight less than 1500 grams;
(xvi) gestational age less than 32 weeks;
(xvii) respiratory distress (mechanical ventilator greater than six hours);
(xviii) asphyxia;
(xix) hypoglycemia (less than 25 mg/dl);
(xx) hyperbilirubinemia (greater than 20 mg/dl);
(xxi) intracranial hemorrhage;
(xxii) neonatal seizures;
(xxiii) major congenital anomalies;
(xxiv) CNS infection or trauma;
(xxv) congenitally acquired infection;
(xxvi) suspected visual impairment;
(xxvii) suspected hearing impairment;
(xxviii) no well child care by age six months;
(xxix) failure on standard developmental or sensory screening test;
(xxx) significant parental concern; and
(xxxi) suspected abuse or neglect.

Statutory Authority G.S. 122C-3; 122C-26; 143B-147.

.0803 GENERAL REQUIREMENTS FOR INFANTS AND TODDLERS

For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite, there shall be:

(1) an assessment which includes:

(a) physical (including vision and hearing), communication, cognitive, social and emotional and adaptive skills development, and the requirements set forth in 34 C.F.R. Part 303.344 (a)(2);

(b) a determination of the child's unique strengths and needs in terms of these areas of development and identification of services appropriate to meet those needs;

(c) if requested by the family, a determination of the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with or at risk for a disability. The family-focused and directed assessment shall be based on information provided through a personal interview and incorporate the family's description of these resources, priorities, and concerns in this area;

(d) procedures developed and implemented to ensure participation by the client's family or the legally responsible person;

(e) no single procedure used as the sole criterion for determining a child's eligibility;

(f) an integrated assessment process which involves at least two persons, each representing a different discipline or profession, with the specific number and types of disciplines based on the particular needs of the child:

(i) The assessment shall include current medical information provided by a physician, physician's assistant, or nurse practitioner; however, a physician, physician's assistant, or nurse practitioner is not required as one of the disciplines involved in the assessment; and

(ii) Further information regarding the assessment may be found in the document "North Carolina Infant-Toddler Program Manual," ~~"Eligibility Determination for the Infants-Toddler Program", published by the Department of Environment, Health, and Natural Resources, and~~ available from the Developmental Disabilities Section of DMH/DD/SAS at no cost upon request.

(g) an evaluation process based on informed clinical opinion;

(h) an assessment process completed within 45 calendar days from the date of referral. The referral shall be initiated by a request for these services made to any one of the public agencies participating in the Part H of the Individuals with Disabilities Education Act Interagency

Agreement. The request shall become a referral when the area program determines that all of the following is available:

(i) sufficient background information to enable the agency receiving the referral to establish communication through a telephone call or home visit;

(ii) reason for referral, date of referral and agency or individual making referral;

(iii) child and family identifying information such as names, child's birthdate and primary physician; and

(iv) summary of any pre-existing child and family screening or assessment information;

(i) a 45 calendar day completion requirement which may be extended in exceptional circumstances, such as, the child's health assessment is being completed out-of-state, or family desires make it impossible to complete the assessment within the time period. The specific nature and duration of these circumstances which prevent completion within 45 days and the attempts made by the provider to complete the assessment shall be documented and an interim Individualized Family Service Plan ~~IFSP~~ shall be developed and implemented; and

(j) the child's family or legally responsible person shall be fully informed of the results of the assessment process.

(2) There shall be a habilitation plan which is referred to as the Individualized Family Service Plan (IFSP) which shall include:

(a) a description of the child's present health status and levels of physical (including vision and hearing), communication, cognitive, social and emotional, and adaptive development;

(b) with the concurrence of the family, a description of the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant and toddler with or at risk for a disability;

(c) goals for the child, and, if requested, goals for the child's family;

(d) criteria and time frames to be used to determine progress towards goals;

(e) planned habilitation procedures related to the goals;

(f) a statement of the specific early intervention services to be provided to meet the identified child and family needs, the initiation dates, frequency and method, duration, intensity and location (including the most natural environment) of service delivery, and the persons or agencies responsible;

(g) the name of the service coordinator from the profession most immediately relevant to the needs of the child or family; and who is otherwise qualified to carry out all applicable responsibilities for coordinating with other agencies and individuals the implementation of the IFSP;

(h) the plans for transition into services which are the responsibility of the NC Department of Public Instruction, or other available services, when applicable;

(i) the payment arrangements for the specific services delineated in Sub-Item (f) of this Item ~~(3)(c)(vi) of this Rule~~;

(j) a description of medical and other services needed by the child, but which are not required under Part H of the Individuals with Disabilities Education Act, and the strategies to be pursued to secure those services through public or private resources. The requirement regarding medical services does not apply to routine medical services, such as immunization and well-baby care, unless the child needs these services and they are not otherwise available.

(3) The IFSP shall be:

(a) reviewed on at least a semi-annual basis or more frequently upon the family's request;

(b) revised as appropriate, but at least annually; and

(c) include in the initial development and annual revision process for the IFSP for infants and toddlers, participation by:

(i) the parent or parents of the child;

(ii) other family members, as requested by the parent;

(iii) an advocate or person outside of the family if the parent requests participation;

(iv) the provider of the early intervention services;

(v) the service coordinator designated for the family, if different from the provider of the early intervention services; and

(vi) the provider of the assessment service, if different from the provider of the early intervention services.

(d) The initial IFSP meeting and annual reviews shall be arranged and written notice provided to families early enough to promote maximum opportunities for attendance. The semi-annual review process shall include participation by persons identified in Subparagraphs (3)(c)(i) through (v) of this Rule. If any of these assessment and intervention providers are unable to attend one of the development or review meetings, arrangements may be made for the person's involvement through other means such as participation in a telephone conference call, having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting. Such arrangements must be approved by all of the

participants.

(e) The IFSP for infants and toddlers shall be based upon the results of the assessment referenced in Paragraph (1) of this Rule and upon information from any ongoing assessment of the child and family. However, early intervention services may commence before completion of this assessment if:

(i) parental consent is obtained; and

(ii) the assessment is completed within the 45-day time period referenced in Paragraph (a) of this Rule.

(f) In the event that exceptional circumstances, such as child illness, residence change of family, or any other similar emergency, make it impossible to complete the assessment within the 45-day time period referenced in Paragraph (1) of this Rule, the circumstances shall be documented and an interim IFSP developed with parent permission. The interim IFSP shall include:

(i) the name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;

(ii) goals for the child and family when recommended;

(iii) those early intervention services that are needed immediately; and

(iv) suggested activities that may be carried out by the family members.

(g) Each facility or individual who has a direct role in the provision of early intervention services specified in the IFSP is responsible for making a good faith effort to assist each eligible child in achieving the goals set forth in the IFSP.

(h) The IFSP shall be developed within 45 days of referral for those children determined to be eligible. The referral shall be as defined in Subparagraph (1)(h) of this Rule.

(i) The contents of the IFSP shall be fully explained to the parents, and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service, or withdraw consent after first providing it, that service shall not be provided. The early intervention services for which parental consent is obtained must be provided.

(j) IFSP meetings shall be conducted in settings convenient to and in the natural language of the family.

(4) The Federal Regulation ~~C.F.R.~~ incorporated by reference in this Rule includes subsequent amendments and editions of the referenced material. A copy of the Federal Regulation ~~C.F.R.~~ is available at no cost from DMH/DD/SAS.

Statutory Authority G.S. 122C-26; 143B-147.

.0804 SURROGATE PARENTS

(a) Circumstances Requiring Surrogate Parents. The area program shall assure the availability of a surrogate parent for infants and toddlers eligible for early intervention services when:

(1) a biological parent or guardian cannot be identified;

(2) efforts to locate the parent are unsuccessful; or

(3) the child is involved in a voluntary placement agreement or is placed in protective custody through the local Department of Social Services.

(b) Identifying Need For And Selection Of A Surrogate Parent:

(1) The child service coordinator shall be responsible for identifying the need for a surrogate parent.

(2) Identification shall be based on any pertinent information and input from:

(A) the local Department of Social Services; and

(B) anyone serving on the Infant/Toddler Interagency Council.

(3) The Area Program Director, or a designee, serving the county of the child's legal residence shall select the surrogate parent.

(c) Responsibilities Of A Surrogate Parent. A surrogate parent shall have the responsibility of being an active spokesperson for a child in matters related to the:

(1) evaluation and assessment of the child;

(2) development and implementation of the child's IFSP, including annual evaluations and periodic reviews; and

(3) ongoing provision of early intervention services to the child.

(d) Priorities For Selection Of A Surrogate Parent:

(1) The area program shall make every effort to select a surrogate parent who has close ties to the child.

(2) In instances when children are placed in foster care or in the care of another individual, the biological parents or guardian shall be given first consideration to act as the surrogate parent.

(3) The following order of priority shall then be considered when selecting the surrogate parent:

(A) person "acting as a parent" - A grandparent, governess, neighbor, friend, or private individual who is caring for the child;

(B) interested relative;

(C) foster parent;

(D) friend of the child's family; or

(E) other individuals.

(4) Approval of the selection of the surrogate parents shall be obtained from either the

biological parents or guardian.

(e) Criteria For Selection Process. Anyone who serves as a surrogate parent shall:

(1) not have conflicting interests with those of the child who is represented;

(2) have knowledge and skills that ensure the best possible representation of the child;

(3) not have any prior history of abuse or neglect; or

(4) not be an employee of the agency involved in the provision of early intervention or other services for the child. However, a person who otherwise qualifies to be a surrogate parent is not considered an employee based on being paid by a public agency to serve as a surrogate or foster parent.

(f) Training Requirements For A Surrogate Parent:

(1) Anyone who serves as a surrogate parent, and is not related to the child, shall have participated in training provided by or approved by the area mental health, developmental disabilities and substance abuse program.

(2) Training shall include, but not be limited to, the following topics:

(A) Part H of the Individuals with Disabilities Education Act, regarding parents' rights, entitlements for children, and services offered;

(B) developmental and emotional needs of eligible infants and toddlers;

(C) available advocacy services; and

(D) relevant cultural issues if the child's culture is different from that of the surrogate parent.

(3) The level of training approach shall be based on needs of the surrogate parent, as determined by the surrogate parent in conjunction with the area program.

Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

.0805 PROCEDURAL REQUIREMENTS

(a) General Area Program Requirements. Area programs and contract agencies shall comply with Section 303.402 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to:

(1) the right of the parents of an eligible child to examine records.

(2) the requirement of prior notice to parents of an eligible child in the parents' native language.

(3) the requirement of parental consent. The period of reasonable time referenced in 303.403(a) shall be construed to be no less than two weeks.

(4) early intervention services (infants and toddlers referred for services shall be assessed in accordance with the provisions of Rule .0803 of this Subchapter, admitted in accordance with the provisions of Subparagraphs (a)(3) and (4) of Rule .0201 of this Subchapter, and receive services in accordance with the provisions of Rule .0803 of this Subchapter: and

(5) surrogate parents.

As used in this Section, the following terms shall have the meanings specified in Section 303.401 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations: "Consent", "Native Language", "Personally identifiable".

(b) Complaint Resolution/Mediation:

(1) Parents of an eligible child shall have the right to a timely administrative resolution of any complaints concerning an area program's or contract agency's proposal or refusal to initiate or change the identification, evaluation or placement of the child, or concerning the provision of appropriate early intervention services to the child and the child's family. The parents of an eligible child shall also have the right to mediation of such complaints.

(2) Whenever an area program or contract agency becomes aware that the parents of an eligible child disagree with any decision regarding early intervention services for their child, the area program or contract agency, whichever is appropriate, shall immediately advise the parents regarding the availability of, and procedure for, requesting complaint resolution under this Section.

(3) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall be in writing and sent to the Director of the area program in which the eligible child is receiving services.

(4) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall contain the following:

(A) name and address of the child;

(B) name and address of the parent;

(C) name and address of the area program or contract agency against whom the complaint is made;

(D) a statement of facts describing in sufficient detail the nature of the complaint;

(E) the signature of the complaining parent and the date of signing; and

(F) whether the parent desires mediation prior to the administrative resolution of his complaint.

(5) Parents of an eligible child may request mediation to resolve a complaint as an intervening step prior to the administrative proceeding. If mediation is requested, the mediation shall take place prior to the administrative proceeding.

(6) If mediation or administrative proceeding is requested, an impartial person shall be:

(A) subject to qualifications of an impartial person as specified in Section 303.421 of Subpart E of

Part 303 of Title 34 of the Code of Federal Regulations and incorporated by reference. This incorporation by reference shall include any subsequent amendment and editions of the referenced material.

(B) selected from a list of mediators and administrative hearing officers approved by the Chief of the Developmental Disabilities Section of DMH/DD/SAS; and

(C) appointed by the area director to serve as a mediator;

(7) DMH/DD/SAS shall provide a training program for the mediators and the administrative hearing officers.

(8) Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediation, administrative proceeding and written decision must be completed within the 30-day timeline set forth in Paragraph (f) of this Rule ~~.0917 of this Section~~.

(c) Scheduling Administrative Proceedings. Upon receipt of written request for administrative complaint resolution, the Director of the area program in which the eligible child is receiving services shall schedule an administrative proceeding in accordance with the requirements of this Section. The parents shall be notified in writing of the date, time and location of the proceeding no later than seven calendar days prior to the hearing by the area director. The hearings must be scheduled at a time and place that is reasonably convenient to the parents.

(d) Authority And Responsibilities Of Impartial Person:

(1) The hearing officer shall have the powers listed in G.S. 150B-33, and in addition shall have the following authority:

(A) to establish reasonable time limitations on the parties' presentations;

(B) to disallow irrelevant, immaterial or repetitive evidence;

(C) to direct that additional evaluations of the child be performed;

(D) to make findings of fact and conclusions of law relevant to the issues involved in the hearing;

(E) to issue subpoenas for the attendance of witnesses or the production of documents; and

(F) to specify the type and scope of the early intervention services to be offered the child, where the proposed services are found to be inappropriate.

(2) The hearing officer does not have the authority to:

(A) determine that only a specific program, specific early intervention staff person or specific service provider is appropriate for the pupil; or

(B) determine noncompliance with state law and regulations.

(3) The decision of the hearing officer shall be in writing and shall contain findings of fact, conclusions of law and the reasons for the decision. The hearing officer shall mail a copy of the decision to each party by certified mail, return receipt requested.

(4) The hearing officer shall inform the parent that the parent may obtain a transcript of the hearing at no cost.

(e) Parent Rights In Administrative Proceedings. Parents of an eligible child shall have the rights set forth in Section 303.422 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations.

(f) Timelines. The administrative proceeding shall be completed, and a written decision mailed to each of the parties within 30 days after the receipt of a parent's complaint as described in Subsection (b) above ~~Rule .0913 of this Section~~.

(g) Civil Action. Section 303.424 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the availability of a civil action for any party aggrieved by the findings and decision in an administrative proceeding is adopted by reference and shall include any subsequent editions and amendments.

(h) Status Of Child During Proceedings. Section 303.425 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the status of a child during an administrative proceeding is adopted by reference and shall include any subsequent editions and amendments.

(i) Confidentiality. Personally identifiable information concerning an eligible child or family member of an eligible child is confidential and may not be disclosed or acquired except as provided by in Subsections (j) and (k) below ~~Rule .0921, .0922, and .0924 of this Section~~.

(j) Disclosure Of Confidential Information To Employees. An area program or contract agency may disclose confidential information to its employees who have a legitimate need for access to the information.

(k) Written Consent Required. Except as provided in Rule .0913 of this Section, all disclosures of confidential information, including disclosures between an area program and contract agency, may be made only with the written consent of the parents. Client information may be disclosed between agencies participating in the provision of early intervention services in accordance with G.S. 122C-53(a), 122C-55(c), 122C-55(f), or 122C-55(h), as appropriate. However, the extent of information disclosed shall be limited to that information which is necessary to carry out the purpose of the disclosure. Parents shall be informed of their right to refuse to consent to the release of confidential information. The content of written consent forms shall comply with the Confidentiality Rules, T10: NCAC 18D.

~~(l) Content of Written Consent:~~

~~(1) When consent for release of information is obtained by an area program or contract agency covered by the rules in this Subchapter, a consent for release form containing the~~

~~information in this Subparagraph shall be utilized. The consent form shall contain the following information:~~

~~(A)~~ child's name;

~~(B) name of party releasing the information;~~

~~(C) name of individual or agency to whom information is being released;~~

~~(D) information to be released;~~

~~(E) purpose for the release;~~

~~(F) length of time consent is valid;~~

~~(G) a statement that the consent is subject to revocation at any time;~~

~~(H) signature of parent;~~

~~(I) signature of individual witnessing the consent; and~~

~~(J) date the consent is signed.~~

~~(2) The release shall be effective only until the initial Individual Family Service Plan is developed, or, if an Individual Family Service Plan has been developed, until the next Individual Service Plan review.~~

~~(m) Release To Public Schools. With the consent of the parents, confidential information may be provided to the public schools if and when the child is enrolled in a program under Part B of the Education of the Handicapped Act. If the parents refuse to consent, confidential information shall not be released to the public schools.~~

(l) Consent To Receive Services. The parents of a child, eligible to receive early intervention services, may determine whether they, their child, or other family members will accept or decline any type of early intervention service without jeopardizing the right to receive other early intervention services.

Authority G.S. 143B-147; 150B-1(d); 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

SECTION .0900 - .1000 - RESERVED FOR FUTURE CODIFICATION

SECTION .1100 - PARTIAL HOSPITALIZATION FOR INDIVIDUALS WHO ARE ACUTELY MENTALLY ILL

.1101 SCOPE

A partial hospitalization facility is a day/night facility which provides a broad range of intensive and therapeutic approaches which may include group, individual, occupational, activity and recreational therapies, training in community living and specific coping skills, and medical services as needed primarily for acutely mentally ill individuals. This facility provides services to:

(1) prevent hospitalization; or

(2) to serve as an interim step for those leaving an inpatient hospital.

This facility provides a medical component in a less restrictive setting than a hospital or a residential treatment or rehabilitation facility.

Statutory Authority G.S. 122C-26; 143B-147.

.1102 STAFF

(a) Staff shall include at least one qualified mental health professional.

(b) Each facility serving minors shall have:

(1) a program director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field;

(2) one staff member present if only one client is in the program, and two staff members present when two or more clients are in the program; and

~~(3) a minimum ratio of one staff member present for every eight clients at all times.~~

(c) Each facility ~~serving adults~~ shall have a minimum ratio of one staff member present for every six clients at all times.

Statutory Authority G.S. 122C-26; 143B-147.

.1103 OPERATIONS

(a) A physician shall participate in diagnosis, treatment planning, and admission and discharge decisions. This physician shall be a psychiatrist unless a psychiatrist is unavailable or for other good cause cannot be obtained.

(b) Each facility shall operate for a minimum of four hours per day (exclusive of transportation time), five days per week, excluding legal or governing body designated holidays.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .1200 - PSYCHOSOCIAL REHABILITATION FACILITIES FOR INDIVIDUALS WITH SEVERE AND PERSISTENT MENTAL ILLNESS

.1201 SCOPE

A psychosocial rehabilitation facility is a day/night facility which provides skill development activities, educational services, and pre-vocational training and transitional and supported employment services to individuals with severe and persistent mental illness. Services are designed primarily to serve individuals who have impaired role functioning that adversely affects at least two of the following: employment, management of financial affairs, ability to procure needed public support services, appropriateness of social behavior, or activities of daily living. Assistance is also provided to clients in organizing and developing their strengths and in establishing peer groups and community relationships.

Statutory Authority G.S. 122C-26; 143B-147.

.1202 STAFF

(a) Each facility shall have a designated program director.

(b) A minimum of one staff member on-site to each eight or fewer clients in average daily attendance shall be maintained.

Statutory Authority G.S. 122C-26; 143B-147.

.1203 OPERATIONS

(a) Skills development, educational and prevocational services. Each facility shall provide:

(1) skills development activities which include:

(A) community living, such as housekeeping, shopping, cooking, use of transportation facilities, money management;

(B) personal care such as health care, medication management, grooming;

(C) social relationships;

(D) use of leisure time;

(2) educational activities which include assisting the client in securing needed education services such as adult basic education and special interest courses; and

(3) prevocational services which focus on the development of positive work habits and participation in work activities.

(b) Employment Services. Each facility shall provide transitional or supported employment services to facilitate client entry into competitive employment.

(1) When supported employment services are provided by the facility, each client shall be one for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of severe mental illness.

(2) When supported employment is to be provided by the facility, one of the following models shall be used:

(A) job coaching and supervision of individuals in an industry or business;

(B) mobile crew service jobs of eight or fewer workers in the community under the training and supervision of a crew leader; or

(C) small business enterprises operated with eight or fewer workers with training and supervision provided on site.

(3) When transitional employment services are provided by the facility:

(A) There shall be an agreement between the facility and employer for a specific job and the job shall first be performed by a facility staff member to determine its technical requirements.

(B) The selection of a client to fill a placement is the responsibility of the facility and the individual client.

(c) Operating Hours. Each facility shall operate for a minimum of five hours per day, five days per week (exclusive of transportation time).

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .1300 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

.1301 SCOPE

(a) A residential treatment facility for children and adolescents is a free-standing residential facility which provides a structured living environment for children and adolescents who have a primary diagnosis of mental illness or emotional disturbance and who may also have other disabilities and for whom removal from home is essential to facilitate treatment.

(b) Services shall be designed to address the functioning level of the child or adolescent and include training in self-control, ~~language or communication~~ skills, social skills, ~~relationships,~~ and recreational skills. Some children or adolescents may be able to receive services in a day treatment facility, have a job placement, or attend public schools; for others, special education services may need to be offered within the residential setting.

(c) The target populations to be served in a residential setting are children and adolescents for whom removal from home to a community-based residential setting is essential to facilitate treatment. Residential treatment is targeted toward children and adolescents who no longer meet criteria for inpatient psychiatric services or intensive residential treatment and need a step-down placement in the community, or those who have been placed in non-residential community setting and need a more intensive treatment program. ~~Different levels of residential treatment programs shall be provided to meet the individual needs of the children and adolescents placed in the facility.~~

(d) Treatment, services, and discharge plans provided by residential treatment facilities shall be coordinated with other individuals and agencies within the client's local system of care.

Statutory Authority G.S. 122C-26; 143B-147.

.1302 STAFF

(a) Each facility shall have a director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.

(b) At all times, at least one direct care staff member shall be present with every four children or adolescents. If children or adolescents are cared for in separate buildings, the ratios shall apply to each building.

(c) When two or more clients are in the facility, an

emergency on-call staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.

(d) Psychiatric consultation shall be available as needed for each client.

(e) Clinical consultation shall be provided by a qualified mental health professional to each facility at least twice a month.

Statutory Authority G.S. 122C-26; 143B-147.

.1303 OPERATIONS

(a) Capacity. Each facility shall serve no more than a total of 12 children and adolescents, except as set forth in this Rule.

(1) Any facility licensed as a Residential Treatment Facility in this category on 1/4/94 and providing services to more than a total of 12 children and adolescents may continue to provide services at no more than the facility's licensed capacity, providing that the capacity does not exceed 24.

(2) Any Child Caring Institution which was licensed by the Division of Social Services on 1/4/94 may seek licensure as a Residential Treatment Facility as follows:

(A) the capacity of each residential unit in the Residential Treatment Facility shall be limited to 12 children and adolescents;

(B) each residential unit will be administered, staffed, and located to function separately from all other residential units in the facility; and

(C) the overall capacity shall be limited to the current capacity of the institution at the time of licensure as a Residential Treatment Facility.

(3) The two former Child Caring Institutions that were licensed as Residential Treatment Facilities in this category on 4/1/90 shall be:

(A) exempt from the capacity limit of 24;

(B) exempt from the provisions in Subparagraphs (2)(A) and (B) of this Rule; and

(C) limited to the licensed capacity existing on July 1, 1993.

(b) Family ~~Parental~~ Involvement. ~~Residential treatment facilities are expected to involve parents~~ Family members or other responsible adults shall be involved in development of ~~treatment goals and~~ plans in order to assure a smooth transition to a less restrictive setting.

(c) Education. Children and adolescents residing in an intensive residential treatment facility must receive appropriate educational services, either through a facility-based school, 'home-based' services, or through a day treatment program. Transition to a public school setting shall be part of the treatment plan.

(d) Age Limitation. If an adolescent has his 18th birthday while receiving treatment in a residential facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.

(e) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.

(f) Personal Belongings. Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

(g) Hours of Operation. Each facility shall operate 24 hours per day, at least five days per week, at least 50 weeks per year, excluding legal holidays.

Statutory Authority G.S. 122C-26; 143B-147.

.1304 PHYSICAL PLANT

(a) The facility must not be hospital-based.

(b) The facility may be locked to prevent unauthorized entry.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .1400 - DAY TREATMENT FOR CHILDREN AND ADOLESCENTS WITH EMOTIONAL OR BEHAVIORAL DISTURBANCES

.1401 SCOPE

(a) Day treatment is a day/night facility for children and adolescents who are emotionally disturbed which coordinates educational activities and intensive treatment while allowing the individual to live at home or in the community.

(b) This service is designed to increase the ability of a child or adolescent to relate to others and function appropriately within the community while serving as an intervention to prevent hospitalization or placement outside the home or community.

(c) It shall provide a therapeutic environment as well as other activities which may include individual therapy, group therapy, recreational therapy, language communication skills development, social skills development, pre-vocational service, vocational training, service to parents, and individual advocacy.

(d) The client's educational activities may be provided in this facility or in another educational setting, such as regular classes or special education programs within a typical school setting.

(e) Treatment, services, and discharge plans provided by day treatment ~~Day Treatment~~ programs shall be coordinated with other individuals and agencies within each client's local system of care.

(f) Day treatment facilities may include before/after school and summer facilities, and early intervention.

Statutory Authority G.S. 122C-26; 143B-147.

.1402 STAFF

(a) Each facility shall have a program director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology

or a related field.

(b) A minimum of two staff members shall be present with clients at all times except on occasions when only one client is in the program, in which case only one staff member is required to be present.

(c) A minimum ratio of one staff member to every eight clients shall be maintained at all times.

(d) Psychiatric consultation shall be available for each client.

Statutory Authority G.S. 122C-26; 143B-147.

.1403 OPERATIONS

(a) If an adolescent has his 18th birthday while receiving treatment in a day treatment facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.

(b) If an older client presents with needs developmentally characteristic of this age group, he may be considered for admission.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .1500 - INTENSIVE RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

.1501 SCOPE

(a) An intensive residential treatment facility for children and adolescents with emotional and/or behavioral disturbances is a short-term, 24-hour residential program providing a structured living environment for children and adolescents who do not meet criteria for acute inpatient care and whose needs require more intensive treatment and supervision than would be available in a community residential treatment facility. Intensive residential treatment is not intended to be a long-term residential placement for children and adolescents who must be permanently removed from their homes.

(b) Services shall be designed to address the functioning level of the child and adolescent and include training in self-control, ~~language or~~ communication skills, social skills ~~relationships~~, and behavioral skills necessary to move to a community setting. Services may also include monitoring medication trials.

(c) The target populations to be served in an intensive residential setting are ~~is~~ children and adolescents for whom removal from home or a community-based residential setting is essential to facilitate treatment. Intensive residential treatment is targeted toward children and adolescents who no longer meet criteria for inpatient psychiatric services and need a step-down placement prior to community placement, or those who have been placed in a community residential setting and need a more intensive treatment program.

(d) Treatment, services and discharge plans by intensive residential treatment facilities shall be coordinated with other individuals and agencies within the client's local system of care.

Statutory Authority G.S. 143B-147.

.1502 STAFF

(a) Each facility shall have a director who has a minimum of three years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.

(b) At all times, at least two ~~one~~ direct care staff members shall be present with every six ~~four~~ children or adolescents in each residential unit.

(c) When two or more clients are in the facility, an emergency on-call staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.

(d) If the facility is hospital based, staff shall be specifically assigned to this program, with responsibilities clearly separate from those performed on an acute medical unit or other residential units.

(e) Each child or adolescent admitted to a facility shall have a weekly consultation with a psychiatrist to review medications and to ensure that the psychiatrist is involved in the development of a transition plan to a less restrictive setting or to a more acute inpatient setting.

(f) Clinical consultation shall be provided weekly by a qualified mental health professional.

(g) Clinical consultation with staff from the responsible area program shall occur weekly in order to assist with the development of a treatment plan in a community-based setting.

Statutory Authority G.S. 143B-147.

.1503 OPERATIONS

(a) Capacity. Each unit shall serve no more than a total of 12 persons. If the facility has more than one residential unit, the capacity of each unit shall be limited to 12 children and adolescents.

(b) Residential units. Each residential unit will be administered, staffed, and located to function separately from all other residential units in the facility.

(c) Length Of Stay. ~~The length of stay shall be no more than 90 days from admission to discharge.~~ Efforts for discharge to a less restrictive community residential setting shall be documented from the date of admission.

(d) Hours Of Operation. Each facility shall operate as a 24-hour facility at least 50 weeks per year.

(e) Family Involvement. Family members or other responsible adults ~~guardians~~ shall be involved in the development and implementation of treatment plans in order to assure a smooth transition to a less~~er~~ restrictive ~~residential~~ setting.

(f) Education. Children and adolescents residing in an

intensive residential treatment facility must receive appropriate educational services, either through a facility-based school, "home-based" services, ~~or~~ through a day treatment program or other services consistent with federal and State law. Transition to a public school setting shall be part of the treatment plan.

(g) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.

(h) Personal Belongings. Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

(i) Transition Planning. Representatives from agencies and institutions serving a child or adolescent shall meet at admission and 30 days prior to discharge in order to assure that a plan for transition to a lesser restrictive residential setting is in place. Family members and/or guardians of the child shall be present at these meetings.

Statutory Authority G.S. 143B-147.

.1504 PHYSICAL PLANT

(a) The facility may be hospital based. The units must be self-contained and separate from acute medical units and other residential units in a clearly defined physical setting.

(b) Beds may not be shared with an acute medical unit.

(c) The facility may be locked to prevent both entry and exit.

Statutory Authority G.S. 143B-147.

SECTION .1600 - .2000 - RESERVED FOR FUTURE CODIFICATION

SECTION .2100 - SPECIALIZED COMMUNITY RESIDENTIAL CENTERS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

.2101 SCOPE

(a) A specialized community residential center is a 24-hour facility which provides care, treatment and developmental training for individuals who are developmentally disabled or have multiple disabilities ~~multi-handicapped~~ over an extended period of time, through integration of medical services and close supervision.

(b) The service is designed to assist each individual to attain his highest level of independent living skills while receiving care for his physical needs.

(c) This facility may be certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

Statutory Authority G.S. 122C-26; 143B-147.

.2102 STAFF

(a) Each facility shall designate a director who has experience in developmental disabilities and holds a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or who has comparable experience and education.

(b) At least one registered nurse or licensed practical nurse shall be on the grounds of the facility at all times.

(c) Each facility shall have at least one registered nurse on staff.

(d) During waking hours, the following minimum client to staff ratios shall be in effect for each building:

(1) a minimum of two direct care staff members shall be on duty at all times; and

(2) a minimum of one direct care staff member shall be on duty for every five clients.

(e) During sleeping hours, the following minimum client to staff ratios shall be in effect for each building:

(1) one direct care staff member shall be awake and on duty at all times and one other staff member shall be on call in the building; and

(2) a minimum of one direct care staff member shall be on duty for every ten clients.

(f) Medical care shall be available on a 24-hour basis for each client.

(g) Each staff member shall have a current medical statement on file with the facility.

Statutory Authority G.S. 122C-26; 143B-147.

.2103 OPERATIONS

(a) Capacity. Facilities beginning operation subsequent to the effective date of these rules shall be designed to serve no more than 30 clients at one location.

(b) Personal Clothing. Each client shall have adequate changes of personal clothing at least daily.

(c) Daily Training Activities:

(1) Daily training activities shall be scheduled to meet the developmental needs of each client.

(2) Activities shall take into consideration the length of time each client should be scheduled for needed rest periods, his need for individual attention, and special limitation of activities and diets.

(3) Both free play and organized recreational activities shall be provided as appropriate to individual needs.

(4) Field trips and community experiences shall be provided for individual clients.

(5) Daily routines common to non-disabled ~~non-handicapped~~ clients shall be followed.

(6) Daily outdoor activities shall be planned in acceptable weather when appropriate to the health and physical needs of the client.

(7) When adults are served, vocational services shall be provided unless there is medical contraindication.

Statutory Authority G.S. 122C-26; 143B-147.

.2104 PHYSICAL PLANT

No more than six infants or children and no more than four adolescents or adults may share an individual bedroom regardless of bedroom size.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .2200 - BEFORE/AFTER SCHOOL, SUMMER, AND SCHOOL YEAR DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS, DEVELOPMENTAL DISABILITIES, OR ATYPICAL DEVELOPMENT

.2201 SCOPE

(a) Before/after school developmental day services for school aged and preschool children with or at risk for developmental delays, developmental disabilities, or atypical development are facilities that provide individual habilitative programming and recreational activities.

(1) Services are provided preceding and following the school day during the months of local school operation and shall be designed to meet developmental needs of the children as well as the child care needs of families.

(2) Before/after school services may be provided as a component of a developmental day center.

(b) Summer developmental day services for school aged and preschool children with or at risk for developmental delays, developmental disabilities, or atypical development are facilities that provide individual habilitative programming and recreational activities in a licensed child care center for school-age children during the summer period, when they are not participating in educational activities. This service is:

(1) designed to promote continuing progress in acquiring developmental skills such as self-help, fine and gross motor, language and communication, cognitive and social skills in order to facilitate functioning in a less restrictive environment; and

(2) designed to meet child care needs of families.

(c) School year developmental day services are day facilities that which provide individual habilitative programming for school aged children during the school day throughout the school year when the local schools are in operation. The children are served under a contractual agreement with the local school system.

(d) The Rules in this Section are applicable when:

(1) these services are provided as a separate free-standing component which is not in the same facility as a developmental day center for children licensed under G.S. 110, Article 7; and

(2) these services are offered for a total of four hours per day or less.

Statutory Authority G.S. 122C-26; 143B-147.

.2202 STAFF

(a) Each staff member, except student trainees and supervised volunteers, shall be at least 18 years of age.

(b) Each center shall have a designated program director who has experience in developmental disabilities, and holds a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.

(c) A minimum of two staff members shall provide direct child care at all times.

(d) A minimum of one direct care staff member shall be on duty for every five children.

(e) Each staff member shall have a current medical statement on file with the facility.

Statutory Authority G.S. 122C-26; 143B-147.

.2203 OPERATIONS

(a) Each before/after school developmental day service shall be available for a minimum of three hours per day (exclusive of transportation time), five days per week, during the months of local school operation.

(b) Each summer developmental day service shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, during the weeks in which local school operation is closed for summer break.

(c) Each school year developmental day service shall be available for a minimum of eight hours per day, five days per week during the months of local school operation.

(d) The center shall provide or secure opportunities for the parent or the legally responsible person to attend individual or group activities.

(e) Grouping shall allow for attending to the individual needs of each child and reflect developmentally appropriate practices.

Statutory Authority G.S. 122C-26; 143B-147.

.2204 PHYSICAL PLANT

(a) Classroom And Activity Space:

(1) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets, and other fixed equipment.

(2) Space shall be available for small groups and individualized training.

(3) Special interest areas shall be provided to enhance the development of individual children.

(4) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.

(5) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program

director for contract agency centers may have a total of 35 square feet available per child for indoor classroom and activity space.

(b) Outdoor Activity Space:

(1) Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time.

(2) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 100 square feet available per child.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .2300 - ADULT DEVELOPMENTAL AND VOCATIONAL PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

.2301 SCOPE

(a) An Adult Developmental and Vocational ~~Activity~~ Program (ADVP) is a day/night facility which provides organized developmental activities for adults with developmental disabilities to prepare the individual to live and work as independently as possible. The activities and services of an ADVP are designed to adhere to the principles of normalization and community integration aimed at increasing age-appropriate actions, images and appearance of the individual.

(b) An ADVP offers a diverse variety of specific services and activities. These include vocational evaluation, vocational training, remunerative employment, personal and community living skill development, adult basic education and long-term support and follow-up . Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided. The amount of time devoted to these areas varies considerably depending on the needs of the clients served.

(c) The Rules contained in this Section are applicable to facility-based ADVP services.

(d) The majority of the ADVP activities in this model, whether vocational or developmental in nature, are carried out on the premises of a site specifically designed for this purpose.

(e) It is the ADVP that shall be subject to licensure, not the location of the business or organization where the client may be placed for work.

Statutory Authority G.S. 122C-26; 143B-147.

.2302 DEFINITIONS

In addition to the terms defined in Rule .0103 of this Subchapter and G.S. 122C-3, the following terms shall also apply:

(1) "Approved supported employment conversion plan" means a planned approach to changing the type of services delivered from ADVP facility-based to supported employment. Approval of the conversion plan is the responsibility of the Chief of the appropriate disability section of DMH/DD/SAS or his designee and the Area Director or his designee if the facility is operated by a contract agency of the area program or other service provider. DMH/DD/SAS shall request appropriate personnel from the Division of Vocational Rehabilitation to participate in the plan review process. The request for approval of the supported employment conversion plan shall include specific written information in the following areas:

(a) number of clients to be moved into supported employment;

(b) types of supported employment models to be used;

(c) time frame for the conversion period;

(d) interim proposed facility staffing patterns and responsibilities; and

(e) proposed budget for the conversion plan.

(2) "Supported employment" means a day/night service which involves paid work in a job which would otherwise be done by a non-disabled worker. Supported employment is carried out in an integrated work site where an individual or a small number of people with disabilities work together and where the work site is not immediately adjacent to another program serving persons with disabilities. It includes involvement of staff working with the individuals in these integrated settings.

Statutory Authority G.S. 122C-26; 143B-147.

.2303 STAFF

(a) Each ADVP shall have a designated full-time program director.

(b) The Program Director shall be at least a high school graduate or equivalent with three years of experience in developmental disabilities programming.

(c) Each facility shall have evaluation services available for all clients.

(d) Each facility shall maintain an overall direct service ratio of at least one full-time or full-time equivalent direct service staff member for every ten or fewer clients. For facilities having an approved supported employment conversion plan as defined in Rule .2302 of this Section, this standard will not apply for a maximum of ten clients or 20 percent of a facility's average daily enrollment, whichever is greater.

(e) Each facility shall have an Admissions Committee.

(f) If the site is maintained by the ADVP:

(1) A safety committee comprised of staff members and clients shall be appointed to review accident reports and to monitor the ADVP for safety; and

(2) Minutes shall be kept of all meetings.

Statutory Authority G.S. 122C-26; 143B-147.

.2304 OPERATIONS

(a) Safety Educational Program. Each ADVP shall provide an ongoing educational program for staff and clients designed to teach them the principles of accident prevention and control of specific hazards. The program shall include training for clients in personal, work and environmental safety.

(b) Business Practices:

(1) If the ADVP seeks or receives remuneration for goods or services provided to another individual, organization or business:

(A) Supplies, materials or tools, if provided by the ADVP, shall be identified as a separate amount in the bid price;

(B) Wages paid to ADVP clients shall be on a piece rate, ~~or~~ hourly commensurate wage or minimum wage or higher;

(C) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions; and

(D) Prices for goods produced in the ADVP shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(2) If the client is an employee of another individual, organization or business, the ADVP shall review client earnings information on at least an annual basis to ensure appropriateness of pay rates and amounts.

(3) Clients shall be counseled concerning ~~informed of~~ their rights and responsibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortious or unethical conduct.

(c) Handbook. Each ADVP shall have a client handbook including, but not limited to, information about services and activities.

(1) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.

(2) Each client shall be given a handbook, and the handbook shall be reviewed with the client.

(d) Hours Of Operation. ADVP services shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week, unless closed in accordance with procedures outlined in 10 NCAC 14C .1100, contained in Division Publication, AREA PROGRAM BUDGETING AND PROCEDURES MANUAL, APSM 75-1.

Statutory Authority G.S. 122C-26; 143B-147.

.2305 PHYSICAL PLANT

If the site is maintained by the ADVP:

(1) Each site shall be inspected annually by an outside safety consultant with written documentation and follow-up on recommendations; and

(2) Each site shall be designed and equipped to promote the training, employment and adult status of clients.

Statutory Authority G.S. 122C-26; 143B-147.

.2306 CLIENT ELIGIBILITY AND ADMISSIONS

(a) Eligibility. Clients served shall be eligible for ADVP regardless of financial resources with the exception of a client whose work earnings exceed 60% of the prevailing ~~federal statutory minimum~~ wage over a consecutive 90-day period. With prior approval of the appropriate area program director or designee, clients who are participating in a supported employment program authorized by DMH/DD/SAS may have earnings in excess of 60% the prevailing wage. Eligibility for clients in non-supported employment settings whose earnings have exceeded over 60% the prevailing wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation, or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services. The eligibility extension shall occur through the annual habilitation planning ~~existing client recertification~~ process carried out by the designated area program qualified developmental disabilities professional. Requests for the extension shall be based on a joint case review involving a representative of the involved ADVP, the local VR unit and the area program. The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for addressing these deficits. The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.

(b) Admissions. Each ADVP shall have written admission policies and procedures.

(1) A pre-admission staffing shall be held for each client considered for admission to the ADVP. During the staffing, the Admissions Committee shall consider information available regarding the client's medical, psychological, social, and vocational histories.

(2) Results of the pre-admission staffing shall be documented and forwarded to the referral or sponsoring agency. A representative of the ADVP admissions committee shall notify the client.

(3) A qualified developmental disabilities

professional of the area program shall certify the eligibility of each client for the ADVP service.

Statutory Authority G.S. 122C-51; 143B-147.

SECTION .2400 - DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS, DEVELOPMENTAL DISABILITIES OR ATYPICAL DEVELOPMENT

.2401 SCOPE

A developmental day service is a day/night service which provides individual habilitative programming for children with, or at risk for developmental delay, developmental disabilities or atypical development in specialized licensed child care centers. The service:

(1) is designed to meet developmental needs of the children such as self-help, physical, language and speech, and cognitive and psychosocial skills in order to facilitate their functioning in a less restrictive environment, as well as to meet child care needs of families; and

(2) offers family training and support.

Statutory Authority G.S. 143B-147.

.2402 STAFF

(a) Each developmental day center shall have a designated director who holds a bachelor level degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.

(b) Each staff member except student trainees and supervised volunteers shall be at least 18 years of age.

(c) Staff shall provide continuous supervision of each child.

(d) A minimum of two staff members shall provide direct child care at all times.

(e) A minimum of one direct child care staff member shall be on duty for every five children.

(f) If school <u>or preschool</u> aged children are served under contract with the Department of Public Instruction, a preschool handicapped, B-K, or special education certified teacher shall be employed for each 20 children or less. The type of certification shall be based on the ages of the children served. When infants and toddlers are served, a professional privileged in accordance with the requirements of Part H of Individuals with Disabilities Education Act shall be employed for each 20 children or less. This material is adopted by reference and includes subsequent editions and amendments.

(g) If infants are served, a minimum of one direct care staff member shall be on duty for every three infants.

(h) Centers with at least 40% of their enrollment being children without disabilities, and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers, may utilize the following staff/child ratio:

(1) Infants - 1:4;

(2) Toddlers and older children - 1:6.

(i) The disciplines of social work, physical therapy, occupational therapy and speech and language therapy shall be available through center employees, consultants, or agreements with other providers.

(j) Each staff member shall have a current medical statement on file with the facility.

Statutory Authority G.S. 143B-147.

.2403 OPERATIONS

(a) Hours. Developmental day services for preschool children shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, twelve months a year.

(b) Daily Training Activities. Activities shall be planned around the following principles:

(1) Group and individual activities, related to individual goal plans, shall be scheduled daily.

(2) Both free play and organized recreational activities shall be provided. No more than one-third of the daily schedule shall be designated for both of these activities combined.

(c) Grouping of children. Grouping shall allow for attending to the individual needs of each child and reflect developmentally appropriate practices.

(d) Family Services:

(1) Parents shall be provided the opportunity to observe their child in the program.

(2) The center shall provide or secure opportunities for parents to attend parent training seminars.

Statutory Authority G.S. 122C-51; 143B-147.

.2404 PHYSICAL PLANT

(a) Classroom And Activity Space:

(1) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets, and other fixed equipment.

(2) Space shall be available for small groups and individualized training.

(3) Special interest areas shall be provided to enhance the development of individual children.

(4) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.

(5) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 35 square feet available per child for

indoor classroom and activity space.

(b) Outdoor Activity Space:

(1) Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time.

(2) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 100 square feet available per child.

(c) Environmental Rating. Each center shall complete an environmental rating scale.

Statutory Authority G.S. 122C-51; 143B-147.

SECTION .2500 - EARLY CHILDHOOD INTERVENTION SERVICES (ECIS) FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAY, DISABILITIES, OR ATYPICAL DEVELOPMENT AND THEIR FAMILIES

.2501 SCOPE

(a) An early childhood intervention service (ECIS) is a periodic service designed to promote the developmental growth of children with or at risk for developmental delay, disabilities or atypical development, and their families. In addition, it provides families with support and information on child-rearing skills and management, and services and resources available to the child and family. The service provides, on a regularly scheduled basis, comprehensive assessment and prescriptive developmental programming in such areas as cognitive, language and communication, physical, self-help, and psychosocial skill development in the client's home which may be supplemented by individual or group services at other sites. This service provides case-specific and general follow-up and consultation to other preschool programs. Case management is also a component of this service.

(b) The primary methodology of service delivery is periodic (usually weekly) home visits which may be supplemented by group or individual activities at sites other than the child's home.

(c) This Section applies to those early intervention services that are available through the area programs and contract agencies.

Statutory Authority G.S. 143B-147; 20 USC 1471.

.2502 DEFINITIONS

~~(a) As used in this Section, the following terms shall have the meanings specified in Section 303.401 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations:~~

~~(1) "Consent;"~~

~~(2) "Native Language;"~~

~~(3) "Personally identifiable."~~

(a) As used in this Section, the term "Early Intervention Services" shall have the meaning specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations.

(b) As used in this Section, an eligible child is an infant or toddler who meets the definition of "high risk children," "developmentally delayed children," or children with "atypical development" as defined in 10 NCAC 14V .0802, or "developmentally disabled" children as defined in G.S. 122C-3.

Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et.seq.

.2503 STAFF REQUIREMENTS

(a) Each ECIS shall have a designated program director who holds at least a baccalaureate degree in a field related to developmental disabilities, or is registered to practice as a registered nurse in the State of North Carolina, and who has at least one year's experience in services for infants or toddlers with or at risk for developmental delays or atypical development. This includes, but is not limited to early childhood education, child development, or special education.

(b) At least one member of the ECIS staff shall be an individual who holds a degree in education or early childhood development.

(c) Staff shall be privileged in accordance with the requirements of Part H of the Individuals with Disabilities Education Act.

Statutory Authority G.S. 122C-51; 143B-147; 20 USC 1471.

.2504 INTERDISCIPLINARY ECIS STAFF

(a) At least one member of the ECIS staff shall be an individual who holds a degree in education or early childhood development.

(b) The disciplines of social work, physical therapy, occupational therapy and speech therapy shall be represented on the staff in response to the documented needs of the children and families served. These disciplines may be represented by staff members, consultant staff, or through agreements with staff of other agencies.

(c) Assessments shall be conducted in accordance with 10 NCAC 14V .0314.

Statutory Authority G.S. 143B-147; 20 USC 1471.

.2505 FOLLOW-ALONG

Follow-along, a continuing relationship with the client for the purpose of assuring that the client's changing needs are recognized and appropriately met, shall be provided semi-annually for one year on behalf of children who have been discharged from the ECIS.

Statutory Authority G.S. 122C-51; 143B-147; 20 USC 1471.

SECTIONS .2600 - .3000 - RESERVED FOR FUTURE CODIFICATION

SECTION .3100 - NONHOSPITAL MEDICAL DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.3101 SCOPE

(a) Nonhospital medical detoxification is a 24-hour residential facility which provides medical treatment and supportive services under the supervision of a physician.

(b) This facility is designed to withdraw an individual from alcohol or other drugs and to prepare him to enter a more extensive treatment and rehabilitation program.

Statutory Authority G.S. 122C-26; 143B-147.

.3102 STAFF

(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.

(b) The treatment of each client shall be under the supervision of a physician.

(c) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(d) Each facility shall have at least one staff member on duty at all times trained in the following areas:

(1) substance abuse withdrawal symptoms, including delirium tremens; and

(2) symptoms of secondary complications to substance abuse.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

Statutory Authority G.S. 122C-26; 143B-147.

.3103 OPERATIONS

(a) Monitoring Clients. Each facility shall have a written policy that requires:

(1) procedures for monitoring each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and

(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least every four hours for the first 24 hours and at least three times daily thereafter.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed detoxification to an outpatient or residential treatment/rehabilitation facility.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3200 - SOCIAL SETTING DETOXIFICATION FOR SUBSTANCE ABUSE

.3201 SCOPE

(a) Social setting detoxification is a 24-hour residential facility which provides social support and other non-medical services to individuals who are experiencing physical withdrawal from alcohol and other drugs.

(b) Individuals receiving this service need a structured residential setting but are not in need of immediate medical services; however, back-up physician services shall be available, if indicated.

(c) The facility is designed to assist individuals in the withdrawal process and to prepare them to enter a more extensive treatment and rehabilitation program.

Statutory Authority G.S. 122C-26; 143B-147.

.3202 STAFF

(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.

(b) The services of a certified alcoholism counselor or a certified substance abuse counselor shall be available on an as-needed basis to each client.

(c) Each facility shall have at least one staff member on duty trained in the following areas:

(1) monitoring vital signs;

(2) alcohol withdrawal symptoms, including delirium tremens;

(3) symptoms of secondary complications to alcoholism.

(d) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

Statutory Authority G.S. 122C-26; 143B-147.

.3203 OPERATIONS

(a) Monitoring Clients. Each facility shall have a written policy that requires:

(1) procedures for monitoring each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and

(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least four times daily for the first 72 hours after admission.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. The facility shall complete a discharge plan for each client and refer each client who has completed detoxification to an outpatient or residential treatment or rehabilitation facility.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3300 - OUTPATIENT DETOXIFICATION FOR SUBSTANCE ABUSE

.3301 SCOPE

An outpatient detoxification facility is a periodic service which provides services involving the provision of supportive services, particularly active support systems under the supervision of a physician for clients who are experiencing physical withdrawal from alcohol and other drugs, including but not limited to appropriate medical, nursing and specialized substance abuse services.

Statutory Authority G.S. 122C-26; 143B-147.

.3302 STAFF

(a) The treatment of each client shall be under the supervision of a physician.

(b) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(c) Each facility shall have at least one staff member on duty trained in the following areas:

(1) monitoring vital signs;

(2) alcohol withdrawal symptoms, including delirium tremens;

(3) symptoms of secondary complications to alcoholism.

(d) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

Statutory Authority G.S. 122C-26; 143B-147.

.3303 OPERATIONS

(a) Hours. Each outpatient detoxification facility shall operate at least eight hours per day, for a minimum of five days per week.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed detoxification to the level of treatment or rehabilitation in accordance with the client needs ~~an outpatient or residential treatment or rehabilitation facility~~.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3400 - RESIDENTIAL TREATMENT/ REHABILITATION FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3401 SCOPE

(a) A residential treatment or rehabilitation facility for alcohol or other drug abuse disorders is a 24-hour residential service which provides active treatment and a structured living environment for individuals with substance abuse disorders in a group setting.

(b) Individuals must have been detoxified prior to entering the facility.

(c) Services include individual, group and family counseling and education.

Statutory Authority G.S. 122C-26; 143B-147.

.3402 STAFF

(a) Staff are required as follows:

(1) Each facility shall have at least one full-time certified alcoholism, drug abuse, or substance abuse counselor.

(2) In addition, each facility shall have at least one full-time qualified alcoholism, drug abuse, or substance abuse professional or one full-time certified alcoholism, drug abuse, or substance abuse counselor for each ten beds or increment thereof in the facility.

(3) For each of the staff members described in Subparagraph (a)(2) of this Rule, at least one shall be a full-time certified alcoholism, drug abuse, or substance abuse counselor for each additional thirty-bed increment.

~~Staff are required as follows:~~

~~(1) One full-time certified alcoholism, drug abuse or substance abuse counselor for a facility having up to 30 beds and for every 30 bed increment or portion thereafter.~~

~~(2) One full-time qualified alcoholism, drug abuse or substance abuse professional or one full-time certified alcoholism, drug abuse or substance abuse counselor for facilities having 11 or more beds and for every ten bed increment or portion thereafter.~~

(b) A minimum of one staff member shall be present in the facility when clients are present in the facility.

(c) In facilities that serve minors, a minimum of one staff member for each five or fewer minor clients shall be on duty during waking hours when minor clients are present.

(d) Any qualified alcoholism, drug abuse or substance abuse professional who is not certified shall become certified by the North Carolina Substance Abuse Professional Certification Board within 26 months from the date of employment, or from the date an unqualified person meets the requirements to be qualified, whichever is later.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, and family therapy.

(f) Each direct care staff member in a facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

(g) Each facility shall have at least one staff member on duty trained in the following areas:

(1) alcohol and other drug withdrawal symptoms;

and

(2) symptoms of secondary complications to alcoholism and drug addiction.

Statutory Authority G.S. 122C-26; 143B-147.

.3403 OPERATIONS

(a) Each facility shall provide or have access to the following services:

(1) individual, group or family therapy for each client;

(2) educational counseling, including schools for minors;

(3) vocational counseling;

(4) job development and placement;

(5) money management;

(6) nutrition education; and

(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.

(b) The facility shall have a written schedule for daily routine activities.

(c) The facility shall establish a schedule for the provision of treatment and rehabilitation services.

(d) Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed residential treatment to an outpatient or residential/rehabilitation facility.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3500 - OUTPATIENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3501 SCOPE

Outpatient facilities provide periodic service for individuals with substance abuse disorders. Outpatient services include individual, group, family, and educational counseling.

Statutory Authority G.S. 122C-26; 143B-147.

.3502 STAFF

(a) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(b) Each facility shall have at least one staff member on duty trained in the following areas:

(1) alcohol and other drug withdrawal symptoms; and

(2) symptoms of secondary complications to alcoholism and drug addiction.

(c) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

(d) Each direct care staff member in an outpatient facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

Statutory Authority G.S. 122C-26; 143B-147.

.3503 OPERATIONS

(a) Group size shall be limited to a maximum of 20 participants.

(b) Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed services to the level of treatment or rehabilitation in accordance with the client needs.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3600 - OUTPATIENT NARCOTIC ADDICTION TREATMENT

.3601 SCOPE

(a) An outpatient narcotic addiction treatment facility provides periodic services designed to offer the individual an opportunity to effect constructive changes in his lifestyle by using methadone or other medications approved for use in narcotic addiction treatment in conjunction with the provision of rehabilitation and medical services.

(b) Methadone and other medications approved for use in narcotic addiction treatment are also tools in the detoxification and rehabilitation process of a narcotic dependent individual.

(c) For the purpose of detoxification, methadone and other medications approved for use in narcotic addiction treatment are administered in decreasing doses for a period not to exceed 180 days.

(d) For individuals with a history of being physiologically addicted to a narcotic for at least one year before admission to the service, methadone and other medications approved for use in narcotic addiction treatment may also be used in maintenance treatment. In these cases, methadone and other medications approved for use in narcotic addiction treatment may be administered or dispensed in excess of 180 days and should be administered in stable and clinically established dosage levels.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3602 DEFINITIONS

In addition to terms defined in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

(1) "Methadone" hydrochloride is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine, most prominent of which involves the central nervous system and

organs composed of smooth muscle. The principal actions of therapeutic value or analgesia and sedation are detoxification or temporary maintenance in narcotic addiction. The methadone abstinence syndrome, although quantitatively similar to that of morphine differs in that the onset is slower, the course more prolonged, and the symptoms are less severe.

(2) "Other medications approved for use in narcotic addiction treatment" means those medications approved by the Food and Drug Administration for use in narcotic addiction treatment and also approved for accepted medical uses under the North Carolina Controlled Substances Act.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3603 STAFF

(a) A minimum of one certified drug abuse counselor or certified substance abuse counselor to each 50 clients shall be on the staff of the facility. If the facility falls below this prescribed ratio, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.

(b) Each facility shall have at least one staff member on duty trained in the following areas:

(1) drug abuse withdrawal symptoms; and

(2) symptoms of secondary complications to drug addiction.

(c) Each direct care staff member shall receive continuing education to include understanding of the following:

(1) nature of addiction;

(2) the withdrawal syndrome;

(3) group and family therapy; and

(4) infectious diseases including HIV, sexually transmitted diseases and TB.

(d) Each facility shall have staff to provide or secure the following services:

(1) individual, group or family therapy for each client;

(2) educational counseling;

(3) vocational counseling;

(4) job development and placement;

(5) money management;

(6) nutrition education; and

(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3604 OPERATIONS

(a) Hours. Each facility shall operate seven days per week, 12 months per year. Daily, weekend and holiday medication dispensing hours shall be scheduled to meet the needs of the client.

(b) Compliance With FDA/NIDA Regulations. Each facility shall be approved by the Food and Drug Administration of the United State Department of Health and Human Services and shall be in compliance with all Food and Drug Administration/National Institute on Drug Abuse Narcotic Addiction Treatment regulations in 21 C.F.R. Part 2 § 291.505. These regulations are available from the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857 at no cost. The material adopted by reference in this Rule includes subsequent amendments and editions of the referenced material.

(c) Compliance With DEA Regulations. Each facility shall be currently registered with the Federal Drug Enforcement Administration and shall be in compliance with all Drug Enforcement Administration regulations pertaining to narcotic addiction treatment programs codified in 21 C.F.R., Food and Drugs, Part 1300 to end. These regulations are available from the United States Government Printing Office, Washington, D.C. 20402 at a cost of four dollars and fifty cents ($4.50) per copy. The material adopted by reference in this Rule includes subsequent amendments and editions.

(d) Compliance With State Authority Regulations. Each facility shall be approved by the State Authority for Narcotic Addiction Treatment, DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, N.C. 2760, which is the "state authority" as defined in the Food and Drug Administration/National Institute on Drug Abuse Narcotic Addiction Treatment Regulations in 21 C.F.R. Part 2, 291.505, and is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the state or territory for governing the treatment of narcotic addiction with a narcotic drug. The referenced material includes subsequent editions and amendments, and may be obtained from the Food and Drug Administration, Division of Scientific Investigations, Regulatory Management Branch, 7520 Standish Place, Room 115, Rockville, Maryland 20855 at no cost.

(e) Take-Home Supplies For Holidays. Take-home dosages of methadone for holidays shall be authorized by the facility physician on an individual client basis according to the following:

(1) An additional one-day supply of methadone may be dispensed to each eligible client (regardless of time in treatment) for Independence Day, Thanksgiving, Christmas, New Year's and other official state holidays.

(2) No more than a three-day supply of methadone may be dispensed to any eligible client because of holidays. This restriction shall not apply to a client who is receiving a six-day take-home supply of methadone.

(f) Withdrawal From Medications For Use In Narcotic

Addiction Treatment. The risks and benefits of withdrawal from methadone or other medications approved for use in narcotic addiction treatment shall be discussed with each client at the initiation of treatment and annually thereafter.

(g) Random Testing. Random testing for alcohol and other drugs shall be conducted on active narcotic addiction treatment clients.

(h) Client Discharge Restrictions. No client shall be discharged from the facility while physically dependent upon methadone or other medications approved for use in narcotic addiction treatment unless the client is provided the opportunity to detoxify from the drug.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505.

SECTION .3700 - DAY TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3701 SCOPE

(a) Day treatment facilities provide services in a group setting for individuals who need more structured treatment for substance abuse than that provided by outpatient treatment, and may serve as an alternative to a 24-hour treatment program.

(b) Day treatment services shall have structured programs, which may include individual, group, and family counseling, recreational therapy, peer groups, substance abuse education, life skills education, and continuing care planning.

Statutory Authority G.S. 122C-26; 143B-147.

.3702 STAFF

(a) The staff of the day treatment facility shall include a minimum of one full-time or equivalent certified alcoholism, drug abuse or substance abuse counselor for every 16 or fewer clients.

(b) If the facility falls below the prescribed ratio in Paragraph (a) of this Rule, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.

(c) In facilities which provide services to minors, a minimum of two staff members shall be present with minor clients at all times, and a minimum ratio of one staff member to each eight or fewer clients shall be maintained. In the event that only one minor client is in the facility, only one staff member is required to be present.

(d) Each facility shall have at least one staff member on duty trained in the following areas:

(1) alcohol and other drug withdrawal symptoms; and

(2) symptoms of secondary complications due to alcoholism and drug addiction.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

(f) Each direct care staff member in a day treatment facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

Statutory Authority G.S. 122C-26; 143B-147.

.3703 OPERATIONS

(a) Each day treatment facility shall operate at least three days per week, but not fewer than 12 hours per week.

(b) A client shall be provided a structured program of treatment for a minimum of five hours per week.

(c) Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed services to the level of treatment or rehabilitation in accordance with the client needs

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .3800 - ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS)

.3801 SCOPE

(a) An alcohol and drug education traffic school (ADETS) is a prevention and intervention service which provides an educational program primarily for first offenders convicted of driving while impaired as provided in G.S. 20-179(m).

(b) Provisions shall be made for family members and other non-students to attend classes if the instructor determines that their presence will not disrupt the class or result in class size exceeding the maximum.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.3802 STAFF

(a) Certification. Each class shall have a designated instructor who is certified by DMH/DD/SAS. An individual seeking initial certification as an instructor shall:

(1) be a high school graduate or its equivalent;

(2) have a working knowledge of alcohol, other drugs, and traffic safety issues;

(3) complete and submit the original and one copy of the application to the DWI/Criminal Justice Branch of DMH/DD/SAS;

(4) complete an initial in-service training program provided by DMH/DD/SAS; and

(5) demonstrate skills by teaching all classes.

(b) Notice. DMH/DD/SAS shall notify the applicant of the decision regarding initial certification within 60 days after receipt of the application.

(c) Duration. The duration of full certification shall be for a maximum period of two years.

(d) Provisional certification. An applicant who does not

obtain initial certification may be issued a provisional certification, and shall be:

(1) informed as to the specific reasons why full certification was denied;

(2) provided with eligibility requirements necessary to reapply for full certification; and

(3) informed regarding the right to appeal the certification decision.

(e) Recertification:

(1) Individuals seeking recertification shall submit documentation of having received a minimum of 48 hours of training in alcohol and drug education traffic subjects during the previous two years. This training shall be provided by or subject to approval by DMH/DD/SAS. Documentation of having received this training shall be submitted to the DWI/Criminal Justice Branch at least 30 days prior to expiration of the current certification.

(2) An individual seeking recertification for each subsequent two-year cycle shall submit documentation of having received 30 hours of training in alcohol and drug education traffic subjects during the preceding two years;

(3) The training shall be provided or approved by DMH/DD/SAS; and

(4) Documentation of this training shall be submitted to the DWI/Criminal Justice Branch of DMH/DD/SAS at least 90 days prior to expiration of the existing certification.

(f) Revocation or suspension of certification may be issued for failure to:

(1) cover the required subjects outlined in the prescribed curriculum;

(2) maintain accurate student records;

(3) comply with certification requirements;

(4) report all students who complete the prescribed course to DMH/DD/SAS in a timely manner.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.3803 OPERATIONS

(a) Curriculum. School instructors shall use the curriculum specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools" (DMH/DD/SAS publication APSM 125-1, 130-1).

(1) The program of instruction shall consist of not less than ten hours of classroom instruction as specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools."

(2) Each school may provide up to three additional hours for classroom time and such activities as an initial student assessment, data gathering or a summary conference with students. Information regarding assessments is available in "Information for Conducting DWI Substance Abuse Assessments and Providing Treatment" (DMH/DD/SAS publication APSP 125-2, 130-2).

(b) Class Schedule. Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.

(1) Each student shall be scheduled to attend the first and the last class sessions in the order prescribed in the curriculum manual.

(2) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

(3) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with Subparagraph (b)(1) of this Rule.

(4) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.

(c) Class Size. Class size shall be limited to a maximum of 35 persons.

~~(d) Court Liaisons. Each school shall develop and implement written procedures of liaison with the court. These procedures shall be agreed upon and signed by the designated employee of the school and by the clerk of court, judge and district attorney. These procedures shall include at least the following:~~

~~(1) the procedure used to obtain referral of offenders from the court;~~

~~(2) a provision that the school will notify each student of the time, date, and location of assigned classes;~~

~~(3) the procedure for notifying the court of a student's successful completion of the course;~~

~~(4) communicating to students in writing the requirements for completing the course and developing a procedure to notify the court of non-compliance cases.~~

(d) DWI Services Certificates Of Completion. The original copy of the North Carolina Department of Human Resources DWI Services Certificates of Completion shall be forwarded to DMH/DD/SAS for review within two weeks of completion of all services.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

SECTION .3900 - DRUG EDUCATION SCHOOLS (DES)

.3901 SCOPE

A drug education school (DES) is a prevention and intervention service which provides an educational program for drug offenders as provided in the North Carolina Controlled Substances Act and Regulations.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.3902 STAFF

Each class shall have a designated instructor who is certified by the DMH/DD/SAS.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.3903 OPERATIONS

(a) Population Served:

(1) Each school shall be designed primarily to serve individuals who are using drugs at the experimental, social-recreational or abusive levels, but who are not drug dependent or engaged in drug dealing.

(2) First offenders referred by the court in accordance with G.S. 90-96 and G.S. 90-113.14 (Conditional Discharges and Expunction of Records for First Offense) shall be served.

(3) Each school shall establish a written policy regarding participation of persons referred from other sources. These persons may be enrolled on a space-available basis.

(b) Initial assessment. Each school shall provide an initial assessment for each potential student prior to the first class session to determine whether the student is eligible to attend the school and to determine if referral to a treatment resource is appropriate.

(c) Class Size:

(1) Class size shall be limited to a maximum of 35 participants; however, the affective education portions of the class shall be limited to a maximum of 20 participants.

(2) Provisions shall be made for family members and guardians of students to audit classes; however, such individuals shall not be counted in the maximum class size.

(d) Curriculum. School instructors shall use the curriculum specified in the "North Carolina Curriculum Manual for Drug Education Schools" (DMH/DD/SAS publication APSM 125-2):

(1) The program of instruction shall consist of not less than 15 hours of classroom instruction as specified in "The North Carolina Curriculum Manual for Drug Education Schools."

(2) Each school may provide up to five additional hours of activity for classroom time and such activities as parent/child communication session, data gathering or a summary conference with students.

(e) Class Schedule. Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.

(1) Each student shall be scheduled to attend all sessions as described in the approved curriculum.

(2) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

(3) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with (b) of this Standard.

(4) Students shall have an opportunity to complete classes within the 150 day time limit for the course specified in G.S. 90-96 and 90-113.14 (Conditional Discharges and Expunction of Records for First Offense). The course instructor shall monitor the 150 day time limit and notify the court if the student does not complete the school within that time limit.

(5) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.

(f) Court Liaison:

(1) Each school shall develop and implement written procedures of liaison with the court. These procedures shall include at least the following:

(A) the procedure used to obtain referral of offenders from the court;

(B) a provision that the school will notify each student of the time, date, and location of assigned classes;

(C) the procedure for notifying the court of a student's successful completion of the course;

(D) communicating to students in writing the requirements for successfully completing the course and developing a procedure to notify the court of noncompliance cases.

(2) These procedures shall be agreed upon and signed by the designated employee of the school and, if possible, by the clerk of court, judge and district attorney.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

SECTION .4000 - TREATMENT ACCOUNTABILITY FOR SAFER COMMUNITIES (TASC)

.4001 SCOPE

(a) Treatment Accountability for Safer Communities (TASC) is a service designed to offer a supervised community-based alternative to incarceration or potential incarceration primarily to individuals who are alcohol or other drug abusers, but also to individuals who are mentally ill or developmentally disabled and who are involved in crimes of a non-violent nature.

(b) This service provides a liaison between the criminal justice system and alcohol and other drug treatment and educational services. It provides screening, identification, evaluation, referral and monitoring of alcohol or other drug abusers for the criminal justice system.

Statutory Authority G.S. 143B-147.

.4002 STAFF

(a) Each TASC staff member shall have a baccalaureate degree in either criminal justice or human service related fields or an associate of arts degree with four years experience in criminal justice or human service related fields.

(b) TASC personnel shall receive continuing education in the following areas:

(1) the physiological, sociological and psychological correlates of substance abuse;
(2) substance abuse treatment;
(3) judicial and political issues related to substance abuse; and
(4) substance abuse treatment and rehabilitation resources.

(c) Each TASC program shall provide its staff with:

(1) a revised and documented training plan, completed annually;
(2) a schedule for implementation of the plan;
(3) documentation of at least 32 hours annually of TASC relevant training which shall include, but need not be limited to, the following:
  (A) TASC mission and philosophy;
  (B) pharmacology;
  (C) sentencing practices;
  (D) assessment of drug dependency;
  (E) substance abuse treatment modalities and expectations; and
  (F) case management.

Statutory Authority G.S. 143B-147.

.4003 OPERATIONS

(a) Population Served. Each TASC program shall be designed to serve individuals who have a documented substance abuse problem and who are involved with the criminal justice system.

(b) Screening and Identification. Each TASC program shall:

(1) provide to potential referral sources a process by which identification, screening and referrals may be accomplished. The process shall include:
  (A) procedures which delineate the method for identifying TASC-eligible clients;
  (B) documented evidence that the program is seeking to have clients referred to it through the justice system. This evidence shall be in the form of a written agreement that shall be signed by the appropriate local judicial official;
  (C) eligibility criteria for TASC client participation; and
  (D) written evidence that cooperating justice system component and treatment agencies are aware of, and have a clear understanding of, who is eligible to receive TASC services.
(2) maintain a listing of community-based treatment, education, and other referral services that includes admission and referral criteria.

(c) Evaluation. Each TASC program shall conduct or secure an assessment or evaluation for each prospective client referred from the criminal justice system which shall include:

(1) documentation that a standardized TASC assessment process is utilized to ensure that all eligibility criteria are met and that standardized TASC assessment instruments and procedures are used to confirm:
  (A) a substance abuse dysfunction;
  (B) current criminal charges; and
  (C) client criminal history.
(2) a face to face assessment interview.

(d) Referral. Each TASC program shall ensure that:

(1) each client is referred to an appropriate level of care, including treatment for mental illness or services for a developmental disability, within 48 hours of the TASC assessment. In the event that immediate placement is unavailable, office monitoring shall be provided.
(2) documentation in the signed agreement indicates that the potential TASC client has been informed and understands program requirements.

(e) Monitoring/Reporting. Each TASC program shall develop and implement a monitoring and reporting procedure for each client, which shall include, but need not be limited to:

(1) notification to the criminal justice system component and treatment provider of each client's TASC acceptance;
(2) an approved individual TASC case management completed by the TASC program and the client within 30 days of admission;
(3) documentation requirements for monthly progress reports from the TASC program to the referring agency;
(4) notification, within 24 hours, of any client's TASC termination; and
(5) documentation in the TASC file of progress for each TASC client from admission to discharge.

(f) Success/Failure Criteria:

(1) Each TASC program shall develop and implement procedures to measure client success or failure, including readmission criteria.
(2) All cooperating justice system components and treatment agencies shall be aware of this criteria as documented in a signed agreement.

(g) Management Information System. Each TASC program shall report, monthly, to the DWI/Criminal Justice Branch, TASC program data using the standardized data form approved by the DMH/DD/SAS.

(h) TASC Unit Organization:

(1) Each area program or contract agency shall ensure that TASC is recognized as a distinct

service and include it on the organizational chart.

(2) The area program and/or contract agency shall appoint a qualified TASC administrator with a specific job description.

Statutory Authority G.S. 122C-57; 143B-147.

SECTION .4100 - THERAPEUTIC HOMES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS AND THEIR CHILDREN

.4101 SCOPE

(a) A therapeutic home is a 24-hour professionally supervised residential facility which provides trained staff who work intensively with individuals with substance abuse disorders who provide or have the potential to provide primary care for their children.

(b) These programs shall include assessment/referral, individual and group therapy, therapeutic parenting skills, basic independent living skills, educational groups, child supervision, aftercare, follow-up and access to preventive and primary health care.

(c) The facility may utilize services from another facility providing treatment, support or medical services.

(d) Services are designed to provide a safe and healthy environment for clients and their children.

(e) Each facility shall assist the individual with the development of independent living skills in preparation for community based living.

Statutory Authority G.S. 143B-147.

.4102 STAFF

(a) Each individual and child admitted to a facility shall receive services from a qualified professional as appropriate to his or her needs who has responsibility for the client's treatment program.. Each individual and child shall receive age-appropriate, therapeutic professional services.

(b) A minimum of one staff member shall be present in the facility with an individual at all times unless the designated qualified professional has documented in the individual client plan that the client may be without supervision in certain clearly delineated instances.

(c) A minimum of one staff member shall be present when one or more children are in the facility.

(d) Each individual identified as a therapeutic residential staff member shall receive pre-service training in the following areas:

(1) Confidentiality;
(2) Client rights;
(3) Crisis management;
(4) Developmentally appropriate child behavior management;
(5) Medication education and administration;
(6) Symptoms of secondary complications to substance abuse or drug addition;
(7) Signs and symptoms of pre-term labor; and
(8) Signs and symptoms of post-partum complications.

(e) Adequate training to support the therapeutic process shall also be provided to all therapeutic residential staff in the following areas within 60 days of employment:

(1) therapeutic parenting skills;
(2) dynamics and needs of emotionally disturbed and substance abusing individuals and their children;
(3) multi-cultural and gender specific issues;
(4) issues of substance abuse and the process of recovery;
(5) HIV/AIDS;
(6) sexually transmitted diseases;
(7) drug screening;
(8) domestic violence, sexual abuse, and sexual assault;
(9) pregnancy: delivery and well child care; and
(10) infant feeding, including breast feeding.

Statutory Authority G.S. 143B-147.

.4103 OPERATIONS

(a) Admissions:

(1) Admission to the facility shall be a joint decision of the designated qualified professional, the provider of residential care, and the individual.
(2) The individual shall have the opportunity for at least one pre-admission visit to the facility except for an emergency admission.

(b) Coordination Of Treatment And Education To Children In The Facility. The appropriate education program for a child shall be coordinated with his/her treatment/habilitation plan.

(c) Emergency Medical Services. Each facility will ensure the availability of emergency medical services to include:

(1) Immediate access to a physician;
(2) Acute care hospital services, and
(3) Assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.

(d) Schedules:

(1) The facility shall have a written schedule for daily routine activities.
(2) The facility shall establish a schedule for the provision of treatment and rehabilitation services.

(e) Discharge plan. Before discharging the client, the facility shall complete a discharge plan for each client and refer each client who has completed services to the level of treatment or rehabilitation in accordance with the client needs

Statutory Authority G.S. 143B-147.

.4104 PHYSICAL PLANT

(a) Each facility shall have the capacity to serve a minimum of three individuals.

(b) Client bedrooms shall have at least 80 square feet for a single occupancy and the following additional square feet for clients' children:

(1) 40 square feet for each infant and toddler;
(2) 60 square feet for each pre-school age child; and
(3) 80 square feet for each child above age six.

Statutory Authority G.S. 143B-147.

SECTION .4200 - SUBSTANCE ABUSE PRIMARY PREVENTION SERVICES

.4201 SCOPE

Substance abuse primary prevention programs focus on the prevention of alcohol, tobacco and other drug (ATOD) abuse and aim to educate and counsel individuals on such abuse, and provide for activities to reduce the risk of such abuse. They are directed towards the general population or towards individuals in targeted high risk groups who are not in need of treatment in order to reduce the incidence of health related problems and promote positive behaviors and well-being.

Statutory Authority G.S. 143B-147.

.4202 STAFF

Each area program shall designate a director for substance abuse primary prevention services.

Statutory Authority G.S. 143B-147.

.4203 OPERATIONS

A comprehensive primary prevention program shall include activities and services in each of the following six primary prevention strategies:

(1) Information Dissemination
(2) Prevention Education
(3) Alternative Activities
(4) Problem Identification and Referral
(5) Community-Based Process
(6) Environmental Approaches

Statutory Authority G.S. 143B-147.

SECTION .4300 - .4900 - RESERVED FOR FUTURE CODIFICATION

SECTION .5000 - FACILITY BASED CRISIS SERVICE FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5001 SCOPE

(a) A facility-based crisis service for individuals who have a mental illness, developmental disability or substance abuse disorder is a 24-hour residential facility which provides disability-specific care and treatment in a nonhospital setting for individuals in crisis who need short-term intensive evaluation, or treatment intervention or behavioral management to stabilize acute or crisis situations.

(b) This facility is designed as a time-limited alternative to hospitalization for an individual in crisis.

Statutory Authority G.S. 122C-26; 143B-147.

.5002 STAFF

(a) Each facility shall maintain staff to client ratios that ensure the health and safety of clients served in the facility.

(b) Staff with training and experience in the provision of care to the needs of clients shall be present at all times when clients are in the facility.

(c) The facility shall have the capacity to bring additional staff on site to provide more intensive supervision, treatment, and/or management in response to the needs of individual clients.

(d) The treatment of each client shall be under the supervision of a physician, and a physician shall be on call on a 24-hour per day basis.

(e) Each direct care staff member shall have access at all times to qualified professionals who are qualified in the disability area(s) of the clients with whom the staff is working.

(f) Each direct care staff member shall be trained and have basic knowledge about mental illnesses and psychotropic medications and their side effects; mental retardation and other developmental disabilities and accompanying behaviors; the nature of addiction and recovery and the withdrawal syndrome; and treatment methodologies for adults and children in crisis.

(g) Staff supervision shall be provided by a qualified professional as appropriate to the client's needs.

Statutory Authority G.S. 122C-26; 143B-147.

.5003 OPERATIONS

(a) Each facility shall have protocols and procedures for assessment, treatment, monitoring, and discharge planning for adults and for children of each disability group served in the facility. Protocols and procedures shall be approved by the area program's medical director or the medical director's designee, as well as the director of the appropriate disability unit of the area program.

(b) Discharge Planning and Referral to Treatment/Rehabilitation Facility. Each facility shall complete a discharge plan for each client that summarizes the reason for admission, intervention provided, recommendations for follow-up, and referral to an outpatient or day program or residential treatment/rehabilitation facility.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5100 - COMMUNITY RESPITE

SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5101 SCOPE

(a) Community respite is a service which provides periodic relief for a family or family substitute on a temporary basis. While overnight care is available, community respite services may be provided for periods of less than 24 hours on a day or evening basis. Respite care may be provided by the following models:

(1) Center-based respite - the individual is served at a designated facility. While an overnight capacity is generally a part of this service, a respite center may provide respite services to individuals for periods of less than 24 hours on a day or evening basis.

(2) Private home respite - the individual is served in the provider's home on an hourly or overnight basis.

(b) Private home respite services serving individuals are subject to licensure under G.S. 122C, Article 2 when:

(1) more than two individuals are served concurrently; or

(2) either one or two children, two adults, or any combination thereof are served for a cumulative period of time exceeding 240 hours per calendar month.

Statutory Authority G.S. 122C-22(a)(8); 122C-26; 143B-147.

.5102 STAFF

(a) The Program Director shall be either:

(1) a graduate of a college or university with a four-year degree in human service-related field; or

(2) a high school graduate or equivalent with at least three years of experience in human service programming.

(b) All staff shall be at least 16 years of age. Any staff under 18 years of age shall work directly under the supervision of an experienced employee. ~~All staff shall be at least 18 years of age except those who are 16 or 17 years of age and who are working directly under the supervision of an experienced employee.~~

(c) Each staff member shall have a current medical statement on file with the facility.

(d) The following minimum staff requirements apply to community center-based respites:

(1) During waking hours, in a facility that serves four or more clients, a minimum of two staff members shall be on duty when five or fewer clients are in the facility. If more than five clients are being served, a minimum ratio of one staff member for every additional five or fewer clients shall be maintained.

(2) During waking hours, in a facility that serves three or fewer clients, a minimum of two staff members shall be on duty unless emergency backup procedures are sufficient to allow only one staff member on duty.

(3) During sleeping hours, a minimum of two staff members shall be available in the immediate area unless emergency backup procedures are sufficient to allow only one staff member on duty.

(4) On occasions when only one client is in the facility, a minimum of one staff member shall be on duty during waking and sleeping hours.

(e) In a private home respite, at least one ~~approved~~ respite provider approved according to guidelines established by the governing body and who has a basic understanding of the client's disability shall supervise the client at all times.

Statutory Authority G.S. 122C-26; 143B-147.

.5103 OPERATIONS

(a) The governing body shall maintain an application for each provider of private home respite which includes the following:

(1) identifying information;

(2) preference of time when respite care can be provided;

(3) age and gender preference of respite clients.

(b) Only the respite program director or his designee shall arrange respite care between the client's family and the respite provider.

Statutory Authority G.S. 122C-26; 143B-147.

.5104 PHYSICAL PLANT

In private home respite services:

(1) A minimum of one ionized smoke detector wired into the house current shall be installed and centrally located. Additional smoke detectors that are not wired into the house current shall be checked at least monthly by the provider.

(2) A dry powder or CO(2) type fire extinguisher shall be located in the kitchen and shall be checked at least annually by the local fire department. Each provider of respite care shall receive instruction in its use prior to the initiation of service.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5200 - RESIDENTIAL THERAPEUTIC (HABILITATIVE) CAMPS FOR CHILDREN AND ADOLESCENTS OF ALL DISABILITY GROUPS

.5201 SCOPE

(a) A residential therapeutic (habilitative) camp is a residential treatment facility provided in a camping environment which is designed to help individuals develop behavior control, coping skills, self-esteem and interpersonal

skills.

(b) Services may include supervised peer interaction, provision of healthy adult role models, and supervised recreational, educational and therapeutic experiences.

(c) Each facility shall be designed to serve children and adolescents six through 17 years of age who have mental illness, developmental disability or substance abuse disorders.

Statutory Authority G.S. 122C-26; 143B-147.

.5202 STAFF

(a) Each facility designed primarily to serve campers who are emotionally disturbed, have a mental illness, developmental disability or substance abuse, shall have a program director who has:

(1) a minimum of two years' experience in child or adolescent services specific to the camper's needs; and

(2) who has camping experience, and who has educational preparation in administrative, education, social work, nursing, psychology or a related field.

(b) A minimum of two staff members shall be on duty for every eight or fewer campers.

(c) Emergency medical treatment shall be available within one hour of the facility.

(d) Psychiatric consultation shall be available to the facility.

(e) An emergency on-call staff shall be readily available by page and able to reach campers within one hour.

(f) Staff assigned to the facility shall be trained to manage the children or adolescents individually and as a group.

(g) Each staff member who works directly and on a regularly scheduled basis with clients shall have a current medical statement on file with the facility.

Statutory Authority G.S. 122C-26; 143B-147.

.5203 OPERATIONS

(a) Each facility shall develop and implement written policies and procedures on basic care and safety.

(b) In accordance with the schedules developed by the Program Director, staff shall maintain the following distance from the campers:

(1) During waking hours, staff shall be within sight or voice range of the campers.

(2) During sleeping hours, staff shall be located within voice range of the campers.

Statutory Authority G.S. 122C-26; 143B-147.

.5204 PHYSICAL PLANT

(a) All sleeping units shall provide at least the following space:

(1) 30 square feet per person;

~~(2) six feet between heads of sleepers; and~~

(2) 30 inches between sides of beds.

(b) A minimum of the following shall be provided:

(1) one shower head for each ten individuals;

(2) one flush toilet for each ten individuals; and

(3) one handwashing facility, adjacent to toilet facilities, for each 20 individuals.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5300 - THERAPEUTIC HOMES FOR CHILDREN AND ADOLESCENTS

.5301 SCOPE

(a) A therapeutic home is a 24-hour residential facility located in a private residence which provides professionally trained parent-substitutes who work intensively with children and adolescents who are emotionally disturbed or have a substance problem, or both.

(b) The parent substitute:

(1) provides for intensive living, social, therapeutic and skill-learning needs; and

(2) receives close supervision and support from a qualified professional.

(c) The facility may utilize services from a facility providing treatment services such as outpatient or day treatment.

Statutory Authority G.S. 122C-26; 143B-147.

.5302 STAFF

(a) Each client admitted to a facility shall receive services from a designated qualified mental health professional or qualified substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.

(1) Each facility shall have a qualified mental health professional or clinical consultation by a qualified mental health professional if a mental health client resides in the facility.

(2) A facility shall have a qualified alcoholism, drug abuse or substance abuse professional or clinical consultation provided by a qualified alcoholism, drug abuse or substance abuse professional at least once a week if a substance abuser resides in the facility.

(b) A minimum of one therapeutic home parent shall be present with clients at all times unless the designated qualified professional has documented in the individual client plan that the client may be without supervision in certain clearly delineated instances.

(c) The individual identified as the therapeutic home parent shall receive training in treatment services which shall include, but not be limited to, the following:

(1) child and adolescent development;

(2) dynamics of emotionally disturbed and substance abusing youth and families;

(3) symptoms of substance abuse;

(4) needs of emotionally disturbed and substance abusing youth in residential settings;
(5) administration of medication;
(6) confidentiality;
(7) client rights; and
(8) development of the individual treatment plan.

Statutory Authority G.S. 122C-26; 143B-147.

.5303 OPERATIONS

(a) Each facility shall serve no more than two clients.

(b) There shall be a written agreement with the therapeutic home parent, and the designated qualified professional or placement agency which includes, but is not limited to, the following:

(1) the responsibility of the provider;
(2) confidentiality requirements; and
(3) responsibility and procedures for securing emergency services.

(c) Information regarding the client's specific needs or conditions shall be given to the provider prior to admission.

(d) A copy of the agreement shall be given to the therapeutic home parents.

(e) Each agency which provides services through contracts with the therapeutic home parents to serve clients in their home shall maintain an application file which includes identifying information.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5400 - DAY ACTIVITY FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5401 SCOPE

(a) Day activity is a day/night facility that provides supervision and an organized program during a substantial part of the day in a group setting to individuals who are mentally ill, developmentally disabled or have substance abuse disorders.

(b) Participation may be on a scheduled or drop-in basis.

(c) The service is designed to support the individual's personal independence and promote social, physical and emotional well-being through activities such as social skills development, leisure activities, training in daily living skills, improvement of health status, and utilization of community resources.

Statutory Authority G.S. 122C-26; 143B-147.

.5402 STAFF

(a) Each client admitted to a facility shall receive services from a designated qualified mental health, developmental disability or substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.

(b) Each facility shall have at least one staff member on site at all times when clients are present in the facility.

Statutory Authority G.S. 122C-26; 143B-147.

.5403 OPERATIONS

Each day activity facility shall be available three or more hours a day on a regularly scheduled basis at least once a week.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5500 - SHELTERED WORKSHOPS FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5501 SCOPE

(a) A sheltered workshop is a day/night facility which provides work-oriented services including various combinations of evaluation, developmental skills training, vocational adjustment, job placement, and sheltered employment to individuals of all disability groups 16 years of age or over who have potential for gainful employment. Sheltered workshops also may be known as Community Rehabilitation Programs (CRPs).

(b) This service is designed for individuals who have demonstrated that they do not require the intensive training and structure found in programs such as Adult Developmental and Vocational ~~Activity~~ Programs (ADVP) but have not yet acquired the skills necessary for competitive employment. It provides the individual opportunity to acquire and maintain life skills including appropriate work habits, specific job skills, self-help skills, socialization skills, and communication skills.

(c) This service focuses on productive work activities for individuals who have potential for gainful employment as determined by Vocational Rehabilitation Services or the ability to participate in a sheltered employment program. Sheltered workshops are subject to Department of Labor Federal Wage and Hour Guidelines for the Handicapped.

(d) The Rules in this Section specify licensure requirements applicable to sheltered workshops which serve individuals who are primarily mentally retarded or otherwise developmentally disabled; however, individuals with mental illness, with substance abuse disorders and severely physically disabled individuals may also be served within a sheltered workshop.

Statutory Authority G.S. 122C-26; 143B-147.

.5502 STAFF

(a) Each facility shall have a designated full-time program director who shall have a baccalaureate degree with one year of experience in developmental disability rehabilitation programming; be a high school graduate or equivalent with three years of experience in developmental disability programming; or be a high school graduate or equivalent with three years of experience in business or personnel

management.

(b) Each facility shall have a designated program coordinator who shall have a baccalaureate degree with one year of experience in developmental disability programming or be a high school graduate or equivalent with three years of experience in ~~mental retardation or other~~ developmental disability programming.

(c) At least one staff member shall be designated as a client evaluator who shall have at least a high school diploma, and shall have completed a five day inservice training program in the evaluation component of a licensed ADVP or sheltered workshop or in another training program approved by DMH/DD/SAS.

(d) Each facility shall maintain an overall direct service ratio of at least one full-time or full-time equivalent direct care staff member for every ten or fewer clients.

Statutory Authority G.S. 122C-26; 143B-147.

.5503 OPERATIONS

(a) Hours. Each facility shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week.

(b) Business Practices:

(1) Supplies, materials or tools, if provided by the sheltered workshop, shall be identified as a separate amount in the bid price.

(2) Wages paid to clients shall be on a piece rate, ~~or~~ hourly commensurate wage, or minimum wage or higher;

(3) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions.

(4) Prices for goods produced in the facility shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(5) Clients shall be counseled concerning their rights and responsibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortious or unethical conduct.

(c) Safety Committee. A safety committee comprised of staff members and client representatives shall be appointed to review accident reports and to monitor the facility for safety. Minutes shall be kept of all meetings and submitted to the Program Director.

(d) Handbook. Each facility shall have a client handbook including, but not limited to, information about services and activities.

(1) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.

(2) Each client shall be given a handbook, and the handbook shall be reviewed with the client.

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5600 - SUPERVISED LIVING FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5601 SCOPE

(a) Supervised living is a 24-hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.

(b) A supervised living facility shall be licensed if the facility serves:

(1) one or more minor clients; or

(2) two or more adult clients.

Statutory Authority G.S. 143B-147.

.5602 STAFF

(a) Staff-client ratios shall be determined so as to enable staff to respond to individualized client needs.

(b) A minimum of one staff member shall be present at all times when any adult client is on the premises in any facility serving clients with substance abuse disorders. In facilities serving clients of other disability groups, a minimum of one staff member shall be present at all times when any adult client is on the premises except when the client has been deemed capable of remaining in the home without supervision for a specified time by a qualified professional of the operating agency or area program. The approval shall be documented.

(c) Staff shall be present in a facility in the following client-staff ratios when more than one child or adolescent client is present:

(1) children or adolescents with mental illness or emotional disturbance shall be served with one staff present for every four or fewer clients present;

(2) children or adolescents with substance abuse disorders shall be served with a minimum of one staff present for every five or fewer minor clients present during waking hours. However, only one staff member need be present during sleeping hours if emergency back-up procedures as determined by the governing body are sufficient to allow only one staff member on duty; or

(3) children or adolescents with developmental disabilities shall be served with one staff present for every one to three clients present and two staff for every four or more clients present. However, only one staff member need be present during sleeping hours if emergency back-up procedures are sufficient to allow only one staff member on duty.

(d) In facilities which serve clients who have substance abuse disorders:

(1) at least one staff member who is on duty shall be trained in alcohol and other drug withdrawal symptoms and symptoms of secondary complications to alcohol and other drug addiction;

(2) when the clients are minors, staff shall be trained in youth development and therapeutic techniques in working with youth; and

(3) the services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as-needed basis for each client.

(e) In facilities which serve individuals with behavior disorders in addition to developmental disabilities, the staff shall include at least one staff member who has received training in the area of behavior management through educational preparation in special education, psychology or a closely related field.

(f) Each staff member who works directly with clients shall have a current medical statement on file with the facility.

Statutory Authority G.S. 143B-147.

.5603 OPERATIONS

(a) Capacity:

(1) A facility shall serve no more than three clients when:

(A) the client lives with a family; and

(B) the family provides the service.

(2) A facility shall serve no more than six clients when the clients have mental illness or developmental disabilities.

(3) Any facility licensed on April 1, 1994, and providing services to more than six clients at that time, may continue to provide services at no more than the facility's licensed capacity as of April 1, 1994.

(b) Service Coordination. Coordination shall be maintained between the facility operator and the qualified professional who is responsible for treatment/habilitation or case management.

(c) Participation of the Family or Legally Responsible Person:

(1) Each client's family shall be provided the opportunity to maintain an ongoing relationship with their relative through such means as family visits to the facility and visits with the family outside the facility.

(2) Reports to the parent of a minor resident, or the legally responsible person of an adult resident, shall be submitted at least annually. Reports may be in writing or take the form of a conference and shall focus on the client's progress toward meeting individual goals.

(d) Program Activities. Each client shall have normalized activity opportunities.

Statutory Authority G.S. 143B-147.

SECTION .5700 - ASSERTIVE COMMUNITY TREATMENT SERVICE

.5701 SCOPE

(a) Assertive community treatment (ACT) services shall be provided to individuals with serious mental illness, developmental disabilities, and/or substance abuse diagnoses who:

(1) may have a pattern of frequent use of crisis services; repeated hospitalizations or incarceration;

(2) may have failed to remain engaged in or to respond to conventional services; or

(3) have been determined to have unusual needs.

Such individuals require intervention by an Assertive Community Treatment Team (ACTT) in order to provide ongoing assertive treatment and services that are made available outside clinic settings in order to address their treatment needs effectively.

(b) The Assertive Community Treatment Team provides a service by an interdisciplinary team that ensures service availability 24 hours a day and is prepared to carry out a full range of treatment functions wherever and whenever needed. The objectives of the service include:

(1) preventing or reducing symptoms or behaviors that may result in the need for recurrent use of inpatient services or incarceration; and

(2) increasing the skills and behaviors that enhance the individual's ability to remain in the community.

Statutory Authority G.S. 143B-147.

.5702 STAFF

(a) Team Composition. The team should be interdisciplinary in order to carry out the varied activities needed to meet the complex needs of clients and shall include:

(1) a qualified professional, appropriate to the diagnoses of the clients being served;

(2) a Registered nurse;

(3) an MD (at least .25 FTE per 50 clients); and

(4) one or more appropriately trained paraprofessional staff.

(b) Team Qualifications. Each member of the team shall be privileged and supervised based on their training, experience, and qualifications.

(c) Client To Staff Ratio. The client/staff ratio should be based on the needs of the clients for whom the team is assigned responsibility. The usual client/staff ratio would be 10 to 1, and shall not exceed 12 to 1.

(d) Organization And Operation Of The Team. The area

program shall develop a program description and policies that address the following:

(1) team composition consistent with staffing pattern based on anticipated client population and with the team composition, client/staff ratio, and staff qualifications described above;

(2) training and supervision (including initial and ongoing cross-disability training if applicable);

(3) communication between and among team members regarding clients' condition by assignment of daily staff responsibilities and regular, frequent staffing;

(4) days and hours of operation;

(5) after-hours plan including on-call coverage and linkages with appropriate after-hours emergency services;

(6) client selection procedures and criteria consistent with this service definition;

(7) description of service provision by ACTT and provisions for rapid access to consultation from other professionals as needed; and

(8) policies regarding Quality Assurance and Quality Improvement including outcome measures.

Statutory Authority G.S. 143B-147.

.5703 OPERATIONS

(a) Objectives. The treatment objectives are addressed by activities designed to:

(1) promote symptom stability and appropriate use of medication;

(2) restore personal, community living and social skills;

(3) promote and maintain physical health;

(4) establish access to entitlements, housing, and work and social opportunities; and

(5) promote and maintain the highest possible level of functioning in the community.

(b) Client Selection Criteria. Eligibility for ACT services shall be determined on the basis of a comprehensive assessment and shall meet criteria Subparagraphs (b)(1), (2), and (3) of this Rule:

(1) A diagnosis of a serious mental illness, developmental disability or substance abuse;

(2) Unusual needs that have required intensive service provision as evidenced by one or more of the following:

(A) an established pattern of frequent use of crisis services, emergency rooms or incarceration related to the diagnosed disorder;

(B) a history of multiple admissions to psychiatric or substance abuse inpatient treatment facilities or multiple emergency admissions to Mental Retardation Centers or respite facilities; or

(C) a history of frequent contacts or referral to protective service or the criminal justice system (including juvenile detention and training schools) secondary to severely dysfunctional or obviously dangerous behavior; and

(3) Have symptoms and behaviors as evidenced by one or more of the following:

(A) a history of alcohol and drug abuse in combination with psychiatric symptoms or other serious medical or physical problems;

(B) a pattern of isolation with extremely poor or non-existent social or family support;

(C) a pattern of inability to provide for basic needs for food, clothing, and shelter;

(D) a pattern of urgent and severe psychiatric and other concomitant medical difficulties; or

(E) have failed to remain engaged in or to respond to conventional services (such as case management, medication, outpatient treatment, or day programs).

(c) Criteria For Continued Eligibility Of ACT Services:

(1) If a client's needs can be adequately and appropriately addressed with an average of less than seven face-to-face contacts per month during any three-consecutive-month period, the treatment plan shall be reviewed to determine whether other less intensive service alternatives should be provided instead of ACT services.

(2) If it is determined that less intensive services could meet a client's needs over the long run, the reasons should be documented, a plan for continuity of care established, and the client should no longer be eligible for ACT services.

Statutory Authority G.S. 143B-147.

SECTION .5800 - SUPPORTED EMPLOYMENT FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5801 SCOPE

(a) A supported employment program is a service ~~facility~~ that provides periodic support services for adults with ~~substantial~~ developmental disability, ~~severe physical disability,~~ mental illness or substance abuse disorders to prepare the individual to work as independently as possible. The service is typically planned and implemented in cooperation with the Division of Vocational Rehabilitation Services.

(b) Supported employment encompasses a variety of services, which are implemented according to the employment needs of the individual as identified in the individual's service plan. These include vocational evaluation, job development, intensive training, job placement, and long-term support. Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided.

(c) The Rules contained in this Section are applicable to two specific models of supported employment services:

(1) Supported Employment. All of the training activities in this model occur in a separate location in the community, not in a specialized facility maintained by the operator.

(2) Supported Employment - Long-Term Support. Clients served in this model have successfully completed the intensive initial training phase of supported employment sponsored by the Division for Vocational Rehabilitation Services, and now are receiving those long-term support services targeted towards maintenance in the job, which are the responsibility of DMH/DD/SAS:

(A) At a minimum these services provide monthly monitoring at the work site of each individual in supported employment in order to assess employment stability, unless the individualized written rehabilitation plan specifies a different monitoring schedule or off-site monitoring, which is based on client request.

(B) Examples of such long-term support services include "refresher" vocational training to ensure that existing job skills are not lost, training in new job performance expectations, and consultation to other employees, employers, and families, and residential program staff.

~~(d) Whatever the model, it is the supported employment that is subject to licensure, not the location of the business or organization where the client is placed for work.~~

Statutory Authority G.S. 122C-26; 143B-147.

.5802 STAFF

(a) Each supported employment facility shall have a designated program director.

(b) The Program Director shall be at least a high school graduate or equivalent with three years of experience in the appropriate disabilities programs.

(c) Each facility shall provide for client evaluation.

(d) Any person providing evaluation of job performance services shall have a high school diploma.

(e) In group supported employment models, such as the mobile crew or enclave, each supported employment shall maintain an overall direct service ratio of at least one full-time equivalent direct service staff member for each eight or fewer clients.

(f) In individual placement models, such as job coach, the amount of staff contact time per client shall be individualized based on client needs and goals as identified in the service plan ~~Individual Program Plan~~.

(g) Each facility shall have an Admissions Committee.

Statutory Authority G.S. 122C-26; 143B-147.

.5803 OPERATIONS

(a) Population Served. Each supported employment program shall be designed primarily to serve individuals who are 16 years of age or older.

(b) Business Practices:

(1) For supported employment programs operated by an area program or its contract agency, if the supported employment program seeks or receives remuneration for goods or services provided to another individual, organization or business:

(A) Supplies, materials or tools, if provided by the supported employment program, shall be identified as a separate amount in the bid price;

(B) Wages paid to supported employment clients shall be on a piece rate, ~~or~~ hourly commensurate wage, or minimum wage or higher;

(C) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions; and

(D) Prices for goods produced in the supported employment shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(2) If the client is an employee of another individual, organization or business, the supported employment shall review client earnings information on at least an annual basis to ensure appropriateness of pay rates and amounts.

(3) Clients shall be counseled concerning their rights and responsibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortious or unethical conduct.

(c) Handbook. For supported employment programs which provide a handbook to each individual served, the handbook will contain ~~Each supported employee shall have a client handbook including, but not limited to,~~ information about programs and services ~~and activities~~:

(1) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.

(2) Each client shall be given a handbook, and the handbook shall be reviewed with the client.

(d) Safety Educational Program. Supported employment services shall include the teaching of accident prevention and occupational safety specific to the job duties of each vocational placement.

Statutory Authority G.S. 122C-26; 143B-147.

.5804 CLIENT ELIGIBILITY AND ADMISSIONS

(a) Eligibility. Clients served shall be individuals 16 years of age or older who have a mental illness, developmental disability, or substance abuse disorder.

~~eligible for supported employment regardless of financial resources with the exception of a client whose work earnings exceed 60% of the federal statutory minimum wage over a consecutive 90 day period:~~

~~(1) with prior approval of the appropriate area program director or designee, clients who are participating in a supported employment program authorized by DMH/DD/SAS may have earnings in excess of 60% the prevailing wage.~~

~~(2) eligibility for clients in non-supported employment settings whose earnings have exceeded over 60% the prevailing wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation; or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services.~~

~~(3) the eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional.~~

~~(A) Requests for the extension shall be based on a joint case review involving a representative of the involved area program, the local VR unit and the area program.~~

~~(B) The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for addressing these deficits.~~

~~(C) The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.~~

(b) Admissions. Each supported employment facility shall have written admission policies and procedures.

(1) A pre-admission staffing shall be held for each client considered for admission to the supported employment program. During the staffing, information shall be considered ~~the Admissions Committee shall consider information available~~ regarding the client's medical, psychological, social, and vocational histories.

(2) Results of the pre-admission staffing shall be documented and forwarded to the referral or sponsoring agency. The client shall be notified of the results of the staffing. ~~A representative of the Admissions Committee shall notify the client.~~

Statutory Authority G.S. 122C-26; 143B-147.

SECTION .5900 - CASE MANAGEMENT FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5901 SCOPE

(a) Case management is a support service through which planning and coordination of services are carried out on behalf of the individual. It is designed to integrate multiple services needed or being received by the individual from the area program or from other agencies with those services being received through the area program.

(b) Case management may include advocacy on behalf of the individual and monitoring the provision of services to the individual. Within this context, case management assists an individual in meeting his total needs by linking the individual to evaluation, treatment, educational, vocational, residential, health, financial, social, and any other needed services.

(c) The extent to which case management services are provided will vary according to the needs of the client. The area program which may elect to provide case management through a variety of models such as:

(1) primary therapist;
(2) contract with a private agency;
(3) disability-specific case managers; and
(4) area operated case management units.

Statutory Authority G.S. 143B-147.

.5902 STAFF

When infants, toddlers and preschoolers are served, the case manager shall have demonstrated knowledge and understanding about:

(1) infants and toddlers with or at risk for developmental delays or atypical development;
(2) Part H of the Individuals with Disabilities Education Act, the federal regulations related to it and relevant state statutes and standards;
(3) effective and appropriate help-giving behaviors; and
(4) the nature and scope of the services available under the state's early intervention program, resources available for payment for services and other related information.

Statutory Authority G.S. 143B-147.

.5903 OPERATIONS

(a) Provision Of Case Management. The case management process shall begin at the time the individual is accepted as a client and shall continue through the termination of the client/agency relationship.

(b) Case Management Activities:

(1) Case management activities shall include:
(A) comprehensive assessment of the client's treatment/habilitation needs or problem areas;
(B) the allocation of responsibilities for implementation and monitoring of the

treatment/habilitation plan;

(C) establishment of separate and joint responsibilities among staff and service agencies involved in helping the individual;

(D) planning for need or problem resolution through the identification or development of an appropriate service network inclusive of all available resources;

(E) assessment or determination of outcomes; and

(F) when minors are served, informing families of the availability of advocacy services.

(2) When infants and toddlers are served, the following additional activities are included:

(A) developing transition plans in conjunction with the family related to entry into preschools which are the responsibility of the Department of Public Instruction or other involved public or private service providers;

(B) facilitating and participating in development, review and evaluation of individualized family service plans;

(C) coordinating with medical and health providers; and

(D) assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family services plan.

Statutory Authority G.S. 143B-147.

SECTION .6000 - INPATIENT HOSPITAL TREATMENT FOR INDIVIDUALS WHO HAVE MENTAL ILLNESS OR SUBSTANCE ABUSE DISORDERS

.6001 SCOPE

(a) Inpatient hospital treatment involves the provision of 24-hour treatment in an inpatient hospital setting. This facility is designed to provide treatment for individuals who have acute psychiatric problems or substance abuse disorders and is the most intensive and restrictive type of facility for individuals. Services may include:

(1) psychological and medical diagnostic procedures;

(2) observation;

(3) treatment modalities, including medication, psychotherapy, group therapy, occupational therapy, industrial therapy, vocational rehabilitation, and recreation therapy and milieu treatment;

(4) medical care and treatment as needed;

(5) supportive services including education; and

(6) room and board.

(b) Psychiatric facilities shall be designed to serve individuals who require inpatient care for the evaluation, treatment, and amelioration of those acute psychiatric symptoms which impair or interfere with the client's ability to function in the community. Because inpatient care is the most restrictive service in the system of care for psychiatric patients, the goal of inpatient hospitalization is to stabilize symptoms so that the client can return to the community as soon as possible. An individual who, in addition to mental illness, has other disorders, such as mental retardation or substance abuse, shall be eligible for admission if the primary need of treatment is for mental illness.

(c) Substance abuse facilities that provide detoxification services shall comply with the applicable rules for detoxification.

Statutory Authority G.S. 143B-147.

.6002 STAFF

(a) Each facility shall clearly delineate in writing the numbers and qualification of its personnel.

(b) Each facility shall have a designated medical director. In a substance abuse facility, the medical director must be a physician with at least two years experience in the treatment of substance abuse.

(c) A physician shall be present in the facility or on call 24 hours per day.

(d) A physician shall supervise the treatment of each client.

(e) Staff coverage in a psychiatric facility shall include at least one of each of the following:

(1) psychiatrist;

(2) licensed practicing psychologist;

(3) psychiatric social worker;

(4) psychiatric nurse; and

(5) the services of a qualified mental health professional readily available by telephone or page.

(f) Staff coverage in a substance abuse facility shall include at a minimum:

(1) one full-time certified alcoholism, drug abuse or substance abuse counselor for every ten or fewer clients. If the facility falls below this prescribed ratio and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment;

(2) at least one registered nurse on duty during each shift;

(3) at least two direct care staff members on duty at all times;

(4) one direct care staff member for each 20 or fewer clients on duty at all times in facilities serving adults;

(5) a minimum of one staff member for each five or fewer minor clients on duty during the hours 7:00 a.m. to 11:00 p.m.; and

(6) at least one staff member on duty trained in substance abuse withdrawal and symptoms of secondary complications to substance abuse.

Statutory Authority G.S. 143B-147.

.6003 OPERATIONS

Program Plan Description. Each facility shall specify:

(1) a daily schedule of therapeutic activities;

(2) a description of services offered for the family and significant others and how these individuals are involved in the treatment process; and

(3) a description of how the client and family members are linked in their home communities with support groups and referral sources; and

(4) a description of how the facility will facilitate the continuity of care between inpatient and outpatient services.

Statutory Authority G.S. 143B-147.

SECTION .6100 - EMERGENCY SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6101 SCOPE

Each area program shall make provisions for emergency services on a 24-hour non-scheduled basis to individuals of all ages and disability groups and their families, for immediate screening or assessment of presenting problems including emotional or behavioral problems or problems resulting from the abuse of alcohol or other drugs.

Statutory Authority G.S. 143B-147.

.6102 STAFF

(a) At least one staff member shall be designated to coordinate and supervise activities of the emergency services network.

(b) A qualified professional, as appropriate to the client's needs, shall be available for immediate consultation and for direct face-to-face contact with clients.

(c) Prior to providing emergency services, each staff member or volunteer shall be trained in:

(1) available resources;

(2) interviewing techniques;

(3) characteristics of substance abuse disorders, developmental disabilities, and mental illness;

(4) crisis intervention;

(5) making referrals; and

(6) commitment procedures.

(d) Volunteers shall be supervised by a qualified professional.

Statutory Authority G.S. 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.6103 OPERATIONS

(a) Emergency services shall include at least the following:

(1) 24-hour access to personnel trained in emergency services;

(2) 24-hour telephone coverage at no cost to the client;

(3) provision for emergency hospital services; and

(4) provision of emergency back-up or consultation by a qualified mental health professional and a qualified alcoholism, drug abuse or substance abuse professional.

(b) The emergency telephone number shall be clearly identified in the local telephone directory and publicized in the community through such means as brochures, appointment cards and public service announcements.

(c) At least one designated staff member of the area program shall review emergency services records to assure that arrangements with treatment/habilitation staff are made for follow-up services.

Statutory Authority G.S. 143B-147.

SECTION .6200 - OUTPATIENT SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6201 SCOPE

Each area program shall make provision for outpatient services which are provided to individuals of all ages and disabilities, families, or groups in a non-hospital setting through short visits for the purpose of treatment, habilitation, or rehabilitation.

Statutory Authority G.S. 143B-147.

.6202 OPERATIONS

(a) Availability Of Services. The area program shall provide at least one clinic that holds office hours no less than 40 hours per week in order to make available outpatient services. Clinics which are located at other sites in the catchment area, and which operate less than 40 hours per week, shall inform clients of the availability of the full-time clinic when part-time clinics are not open.

(b) Scheduling Appointments. The service shall establish and implement written procedures for scheduling appointments and providing services for individuals without appointments.

Statutory Authority G.S. 143B-147.

SECTION .6300 - COMPANION RESPITE SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6301 SCOPE

Companion respite is a support service in which a trained respite provider is scheduled to care for the individual in a variety of settings, including the individual's own home or other location not subject to licensure.

Statutory Authority G.S. 143B-147.

.6302 STAFF

Each provider shall have a current medical statement on file with the area program.

Statutory Authority G.S. 143B-147.

.6303 OPERATIONS

(a) Responsibilities Of Governing Body. Each governing body shall:

(1) develop and implement written criteria for the approval of providers and the sites where services may be provided.

(2) attempt to match the client's needs with the provider's ability to provide respite services.

(3) make available to the provider instructions regarding duties and responsibilities which shall include, but need not be limited to:

(A) length of time for which service will be provided;

(B) administration of medications; and

(C) special dietary considerations.

(4) furnish written information to the provider, if the client is involved in a day program, regarding responsibilities for assuring that the client attends the program and for structuring activities to enhance objectives established by the developmental or occupational program.

(b) Agreement With Providers. Unless represented in a written job description for providers or in written policies and procedures, each governing body shall have a written agreement signed by each provider of respite care. A signed copy of the agreement shall be maintained by the governing body, and a signed copy shall be given to the provider. The provisions of the agreement shall specify the responsibilities of the governing body and the provider including:

(1) confidentiality requirements;

(2) procedures for securing emergency services;

(3) program activities to be implemented;

(4) responsibilities for supervising the respite client;

(5) procedures related to administration of medications;

(6) participation in respite training programs;

(7) terms of compensation;

(8) client rights; and

(9) adherence to agency policies and procedures.

Statutory Authority G.S. 143B-147.

SECTION .6400 - PERSONAL ASSISTANCE FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6401 SCOPE

(a) Personal assistance is a service which provides aid to a client who has mental illness, developmental disabilities or substance abuse disorders so that the client can engage in activities and interactions in which the client would otherwise be limited or from which the client would be excluded because of a disability or disabilities. The assistance includes:

(1) assistance in personal or regular living activities in the client's home;

(2) support in skill development; or

(3) support and accompaniment of the client in regular community activities or in specialized treatment, habilitation or rehabilitation service programs.

(b) If these Rules are in conflict with Medicaid ~~rules~~ or Medicare rules regarding Personal Care, and Medicaid or Medicare is to be billed, then the Medicaid or Medicare rules shall prevail.

Statutory Authority G.S. 143B-147.

.6402 STAFF

(a) Personal assistance shall be provided under the direction of a supervisor who is a qualified professional.

(b) When a specific client's disability is different from that for which the supervisor is trained, the personal assistance employee shall have access to consultation from a qualified professional who is trained in a discipline related to the client's needs.

(c) Individuals who are employed to provide personal assistance shall have:

(1) at least a high-school diploma or its equivalent; and

(2) special training regarding the needs of the specific client for whom assistance will be provided.

(d) Individuals employed to provide personal assistance shall be specifically informed in each personal assistance arrangement regarding safety precautions and 24-hour emergency procedures.

Statutory Authority G.S. 143B-147.

.6403 OPERATIONS

Housing Review. When personal assistance for a client includes providing service in the client's home, one of the purposes of the service is to assess the safety and sanitation of the home with the client. If the safety or sanitation is in question, it shall be brought to the attention of the client and the professional responsible for the treatment/habilitation or case management of the client, so that the situation can be discussed as a part of the regular treatment/habilitation or case management planning process.

Statutory Authority G.S. 143B-147.

SECTION .6500 - EMPLOYEE ASSISTANCE PROGRAMS (EAP)

.6501 SCOPE

(a) An employee assistance program (EAP) is a worksite based program designed to assist in the identification and resolution of productivity problems in the workplace associated with employees impaired by personal concerns including, but not limited to, health, marital family, financial, alcohol, drug, legal, emotional, stress, or other personal concerns which may adversely affect employee job performance.

(b) The service is offered in partnership with employers with whom the area program has a written agreement and provides employee education, supervisory training, referral, follow-up and program evaluation.

Statutory Authority G.S. 143B-147.

.6502 STAFF

The area program shall designate an individual who has the responsibility for planning and implementing employee assistance programs with employers from both the public and private sector.

Statutory Authority G.S. 143B-147.

.6503 OPERATIONS

(a) Population Served. Each EAP shall be designed to serve the organization (employer), its employees, and their family members by providing a comprehensive system from which employees can obtain assistance addressing personal problems which may affect their work performance.

(b) Written Agreement. The EAP shall implement, within the constraints placed on it by the employer firm, a written agreement with community employers which incorporates the following:

(1) a written formal policy statement promulgated by the community employer which defines the intent of the program;

(2) identification of a program administrator by the community employer who will serve as liaison between the employer and the EAP;

(3) written procedures to be used by the community employer in implementing its EAP;

(4) written procedures to be used by the EAP to carry out the screening and referral process; and

(5) a statement assuring the community employer that the EAP shall comply with applicable confidentiality regulations.

(c) Training. The EAP shall establish and make available a training program to be used in promoting the utilization of the program.

(d) Awareness Program. The EAP shall implement an ongoing employee awareness program to inform employees of the availability of services.

Statutory Authority G.S. 143B-147.

SECTION .6600 - SPECIALIZED FOSTER CARE SERVICES

.6601 SCOPE

Specialized foster care is a support service provided cooperatively by the area program and the local department of social services or other licensed child care agency for individuals with developmental disability or mental illness who are in the custody of or whose parents have entered into a boarding home agreement with the local Department of Social Services or other licensed child care agency. Individuals up to 21 years of age may be served if they are involved in an ongoing educational program provided by the public school system or an adult day service provided by an adult developmental activity program or community college system. Support activities include funding, monitoring and evaluation, program coordination, parent training, development and implementation of individual treatment or goal plans, and consultation and technical assistance. These services shall be designed to serve those individuals in whose behalf area program funds are directed to foster parents in exchange for the provision of individualized prescriptive programming.

Statutory Authority G.S. 131D, Article 1A; 143B-147; 143B-153.

.6602 APPROVED FOSTER HOMES

Each foster home shall be licensed by the Department of Human Resources and supervised by the county Department of Social Services or other licensed child care agency and shall meet the criteria for receipt of Title XX (P.L. 97-35) foster care special services funds as specified in 10 NCAC 41F and J. The criteria are available for review at each county Department of Social Services office.

Statutory Authority G.S. 131D-10.3; 143B-147.

.6603 PLACEMENT CARE AGREEMENT

(a) The area program shall negotiate a placement care agreement with the specialized foster care parents on behalf of each individual for whom the area program contracts for specialized foster care services.

(b) The agreement shall include provisions related to the following:

(1) commitment by the foster parents to participate in needed treatment programs related to the foster placement;

(2) commitment from the foster parents to participate with area program staff in the development and implementation of individualized treatment or goal plans;

(3) commitment by the foster parents to receive consultation and technical assistance from the area program; and

(4) commitment by the foster parents that any decision to terminate services shall be negotiated

among the foster parents, the area program and county Department of Social Services consistent with the termination clause of the agreement.

Statutory Authority G.S. 122C-51; 143B-147.

SECTION .6700 - FORENSIC SCREENING AND EVALUATION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6701 SCOPE

Forensic services shall be designed to serve offenders and alleged offenders referred by the criminal justice system by court order.

Statutory Authority G.S. 143B-147.

.6702 OPERATIONS

(a) Forensic Screening And Evaluation. Forensic screening and evaluation to assess capacity to proceed to trial shall be provided by evaluators trained and registered in accordance with the provisions of 10 NCAC 18F .0115 through .0122; TRAINING AND REGISTRATION OF FORENSIC EVALUATORS (DMH/DD/SAS publication APSR 100-3).

(b) Consultation To Law Enforcement Officials. Consultation to law enforcement officials, including consultation prior to the commitment of an offender or alleged offender to any state psychiatric hospital, shall be provided.

(c) Justice Treatment Services:

(1) Each area program shall develop and implement a written justice treatment services plan which shall provide for the coordination of area program court related activities with the criminal justice system.

(2) An individual shall be designated who has responsibility for developing and implementing the justice treatment services plan.

Statutory Authority G.S. 15A-1002; 143B-147.

SECTION .6800 - PREVENTION SERVICES

.6801 SCOPE

Prevention services shall include information, consultation, education and instruction for the general population.

Statutory Authority G.S. 143B-147.

.6802 STAFF

The area program shall designate a director for prevention services.

Statutory Authority G.S. 143B-147.

SECTION .6900 - CONSULTATION AND EDUCATION SERVICES

.6901 SCOPE

(a) Consultation is a prevention or intervention service provided to other mental health, human service, and community planning and development organizations or individual practitioners of other organizations designed to both impart knowledge and assist recipients in developing insights and skills necessary to carry out their service responsibilities. The ultimate goal is to increase the quality of care available in the service delivery system.

(b) Education is a prevention or intervention service designed to impart knowledge to various target groups, including clients, families, schools, businesses, churches, industries, and civic and other community groups in the interest of increasing understanding of the nature of mental health, mental retardation, and substance abuse disorders, and the availability of various community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life situations.

Statutory Authority G.S. 143B-147.

.6902 STAFF

The consultation and education service shall have a designated director.

Statutory Authority G.S. 143B-147.

.6903 OPERATIONS

(a) Written Program Plan. Each area program shall develop annually a written plan for consultation and education services specifying populations that will be targeted and objectives to be obtained.

(b) Coordination of Services. The consultation and education service shall be coordinated with other components of the area program to insure continuity of care.

Statutory Authority G.S. 143B-147.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services and the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 15A .0115 - .0126; repeal 15A .0205 - .0228 and adopt 15A .0127.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 13, 1995 at Brownestone Hotel, 1707*

Hillsborough Street, Raleigh, NC 27605, (Phone: 919-828-0811).

Reason for Proposed Action: *To incorporate language based on approval of Medicaid Waiver; and to reduce Rules by consolidating Adult and Minor Admission Rules.*

Comment Procedures: *Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919-733-4774. Written comments will be accepted through November 12, 1995, and must state the Rules to which the comments are addressed. These comments should be sent to Charlotte Tucker at the above address. Please provide 35 copies of the comments for distribution at the hearing. Time limits for oral remarks may be imposed at the hearing. Fiscal information regarding these Rules is available from the Division upon request.*

Fiscal Note: *These Rules affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 15 - MENTAL HEALTH: HOSPITALS

SUBCHAPTER 15A - GENERAL RULES FOR HOSPITALS

SECTION .0100 - VOLUNTARY ADMISSIONS: INVOLUNTARY COMMITMENTS AND DISCHARGES OF ADULTS FROM REGIONAL PSYCHIATRIC HOSPITALS

.0115 SCOPE

The rules in this Section apply to admissions, commitments and discharges of all adult clients to and from the regional psychiatric hospitals of the Division. The criteria and procedures shall be followed by staff of the hospitals and by area program staff making referrals to the hospitals and serving clients following discharge from the hospitals. Rule .0127 of this Section contains provisions that relate only to minors from non-single portal area programs.

Statutory Authority G.S. 122C-211; 122C-212; 143B-147.

.0116 EXPLANATION OF TERMS

For the purposes of the rules in this Section the following terms shall have the meanings indicated:

(1) "Area program staff" means a ~~mental health~~ professional who is an employee of the area authority or who contracts with the area authority or is employed by an agency which contracts with the area authority and is clinically privileged by the area authority.

~~(2) "Chronic, fixed organic conditions" means changes in the central nervous system which are not susceptible to corrective intervention.~~

(2) "Authorization" means the process whereby area program staff approve of the hospitalization of a client currently residing in their catchment area, and agree that the hospitalization shall be included in their bed day utilization count.

~~(3) "Dangerous to himself or others" has the meaning specified in G.S. 122C-3(11).~~

~~(4) "Geriatric clients" means persons 65 years old or over who present themselves or are referred for hospital admission.~~

(3) "Continuity of care" means the seamless integration of both inpatient and outpatient services into a unified plan of care for clients served by the area authority.

(4) "County of residence" has the meaning specified in G.S. 122C-3.

(5) "County where currently residing" means the county where the client was living immediately prior to hospitalization.

(6) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

(7) "Eligible Psychologist" means a licensed practicing psychologist who has at least two years' clinical experience.

(8) "Facility" has the meaning specified in G.S. 122C-3.

(9) ~~(5)~~"Hospital" means one of the regional psychiatric hospitals of the Division.

(10) ~~(6)~~"Mental illness" has the meaning specified in G.S. 122C-3(21).

Statutory Authority G.S. 122C-3; 143B-147.

.0117 AUTHORIZATION OF HOSPITALIZATION BY AREA PROGRAM

~~When an individual from a single portal area presents himself or is presented directly at the hospital for voluntary admission or involuntary commitment, such admissions or commitments shall be handled in accordance with G.S. 122C-211(e) and 122C-261(f) unless 122C-262 applies.~~

(a) Designated area program staff shall authorize all hospitalizations for individuals residing in an area program's catchment area.

(b) This authorization shall be done when the individual is evaluated by the area program for referral to the hospital for admission and shall be reviewed as required.

(c) When such authorization is for an individual residing in a facility within the catchment area but whose county of residence is outside the catchment area, the authorizing area program shall notify the area program serving the individual's county of residence within 24 hours.

(d) Authorization for continuing hospitalization is the responsibility of the area program serving the individual's county of residence.

Statutory Authority G.S. 122C-211(e); 122C-261(f); 122C-262; 143B-147.

.0118 AUTHORIZATION OF HOSPITALIZATION WHEN INDIVIDUAL ARRIVES DIRECTLY AT HOSPITAL

~~The individual or his legally responsible person as defined in G.S. 122C-3(20) shall sign a written request for voluntary admission before the client is evaluated for admission.~~

(a) When an individual from an area program arrives at the hospital for admission without—area program authorization, the hospital shall contact designated personnel of the area program, of the individual's county of residence, before admission is approved.

(b) If the area program does not respond within one hour, the hospital is deemed to have been authorized to admit, and shall contact the area program on the next working day to obtain authorization for continuation of the hospitalization.

Statutory Authority G.S. 122C-3; 122C-211; 143B-147.

.0119 WRITTEN EVALUATION BY AREA PROGRAM

(a) Area program staff ~~in a single portal area~~ shall evaluate each individual prior to authorization and referral to the hospital unless G.S. 122C-262 applies. ~~The written evaluation shall comply with Paragraph (c) of this Rule.~~

~~(b) Area program staff not in a single portal area shall use best efforts to evaluate each individual prior to referral to the hospital unless G.S. 122C-262 applies. The written evaluation shall comply with Paragraph (c) of this Rule.~~

(b) ~~(c)~~The evaluation shall be in writing and shall include the following:

(1) identifying information, e.g., client's full name (including maiden name), address, birthdate, race; ~~name, address, age, race, etc.;~~

(2) referral source;

(3) presenting problem;

(4) if available, medications and pertinent medical and psychiatric information, including the ~~DSM III R code~~ DSM IV diagnoses, detailed history of treatment, side effects, allergies, last injection date, recent laboratory work and treatment;

(5) name, address and phone number of legally responsible person and next of kin, if applicable;

(6) legal charges pending, if applicable; and

(7) name and telephone number of the area program ~~referring~~ staff members ~~member~~ to contact for further information including staff to call after regular working hours.

(c) ~~(d)~~The written evaluation shall accompany the individual to the hospital.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0120 ADDITIONAL INFORMATION FOR TREATMENT

~~(a) The following client information, if available, shall be sent by the referring agent to the appropriate hospital admissions office within three working days of the client's admission or commitment to the hospital. This information shall include but need not be limited to the following:~~ The following client information, if available, should be sent with the evaluation which accompanies the individual to the hospital. If not immediately available, it shall be sent, together with any information required by Rule .0119 of this Section but not provided in the evaluation, by the authorizing area program to the appropriate hospital admissions office within one working day of the client's admission to the hospital. This information, which shall be used by hospital staff in developing the client's treatment plan, shall include but need not be limited to the following:

(1) name of client's mental health center therapist and psychiatrist and case manager, if applicable;

(2) county of residence ~~full name of client, including maiden name if applicable~~;

(3) name, address and telephone number of the relevant individuals in the client's family and social support network; ~~legal county of residence;~~

(4) previous admissions to any state facility, i.e., psychiatric, substance abuse, developmental disabilities; ~~birthdate;~~

(5) current psychiatric and other medications, including compliance with medications and aftercare instructions; ~~previous admissions to any state facility;~~

(6) alternatives attempted or considered prior to referral to the hospital; ~~name, address and telephone number of the legally responsible person or next of kin;~~

(7) goal of hospitalization specifying the treatment objectives that the hospital should address; ~~any medical problems, including pertinent laboratory data and treatment;~~

(8) specific suggestions for programming and other treatment planning recommendations; and ~~current psychiatric and other medications;~~

(9) release plans, which include information relevant to placement and other special considerations of the client upon discharge from the hospital. ~~history of compliance with medications and after care instructions;~~

~~(10) alternatives attempted or considered prior to referral to hospital;~~

~~(11) goal of hospitalization specifying the treatment problems that the hospital should address;~~

~~(12) specific suggestions for programming and other treatment planning recommendations; and~~

~~(13) release plans, which include the information~~

~~relevant to placement and other special considerations of the client upon discharge from the hospital.~~

~~(b) The information required in Paragraph (a) of this Rule shall be used by hospital staff in developing the client's treatment plan.~~

~~(c) When there are differences of opinion between area program staff and hospital staff regarding the area program's treatment recommendations, the hospital staff shall notify the area program staff. Together the hospital and area program staff shall attempt to resolve these differences according to the procedures specified in Rule .0129 of this Section.~~

Statutory Authority G.S. 122C-261 through 122C-277; 143B-147.

.0121 COMMUNICATION TO AREA PROGRAM REGARDING ADMISSION/DENIAL

~~Any individual brought to a hospital pursuant to Part 7 of Article 5 of G.S. 122C shall be evaluated for commitment.~~

(a) In all instances where area program staff have evaluated, authorized, and referred the individual to a hospital with a recommendation for admission, the area program staff shall call the hospital admission office to inform it of the authorization and referral, and advise it as to the name and phone number of an area program contact person.

(b) If the opinion of the examiner at the hospital is that the individual does not meet inpatient criteria, the examiner shall contact designated area program staff to discuss the individual's condition prior to releasing the individual. Unreasonable delay shall not occur as a result of the foregoing and in no event shall the individual be detained by the hospital for more than 24 hours.

(c) If the opinion of the examiner is that the individual does meet inpatient criteria, the hospital shall contact designated area program staff within 24 hours to notify them of the admission.

(d) When the hospital staff does not accept a client for admission, the hospital staff, client, area program staff, and if appropriate, family or legally responsible person, shall discuss where in the community the client shall be returned and shall discuss with the client options for receiving services.

Statutory Authority G.S. 122C-132; 122C-221; 122C-261 through 122C-277; 143B-147.

.0122 GENERAL CRITERIA FOR ADMISSION

~~(a) In those instances where the individual has not been referred by an area program, the hospital shall notify the referring agent and the appropriate area program regarding the hospital's decision to admit or deny admission to the individual. Such notifications shall be made within the limitations specified in G.S. 122C-53(a) and 122C-55(a).~~

~~(b) In all instances where area program staff has evaluated and referred the individual to a hospital with a recommendation for involuntary commitment or voluntary admission, if the opinion of the examiner at the hospital is that the individual does not meet inpatient criteria, the examiner shall make reasonable efforts to contact area program staff to discuss the individual's condition prior to releasing the individual. Provided, however, that unreasonable delay shall not occur as a result of the foregoing and in no event shall the individual be detained by the hospital for more than 24 hours.~~

~~(c) When the hospital does not accept a client for admission, the hospital staff shall refer the client back to the area program.~~

(a) Admission staff shall evaluate the individual to determine that:

(1) there is the presence of mental illness;

(2) the individual is in need of treatment or further evaluation at the facility; and

(3) admitting the individual to the hospital is an appropriate treatment modality.

(b) The individual shall currently reside in the region served by the hospital unless one or more of these exceptions occurs:

(1) A transient resident of another state who requires hospitalization shall be admitted to the hospital serving the region in which the client is found.

(2) A defendant who is ordered to a state mental health facility for determination of capacity to proceed to trial (G.S. 15A-1002) may be admitted to the Forensic Unit at Dorothea Dix Hospital.

(3) An individual whose treatment needs have necessitated a cross regional admission from the hospital in his region may be admitted as arranged by the Division's Chief of Mental Health Services or his designee.

(4) In case of emergency, a client may be admitted to a hospital outside of the region of residence. Subsequent transfer may include transfer to the appropriate regional hospital and such transfer shall be in accordance with G.S. 122C-206.

(5) A client from any catchment area of the state may be considered for admission to the Clinical Research Unit of Dorothea Dix Hospital. In the case of a client of another regional hospital, application shall be made in accordance with G.S. 122C-206.

(c) An individual shall not be admitted to a hospital if the:

(1) primary need is custodial care pending rest home or nursing home placement;

(2) treatment needs can be met locally;

(3) admission is sought primarily because of a lack of living space or financial support; or

(4) primary medical or surgical problem can be more appropriately treated in a general hospital.

Statutory Authority G.S. 122C-3; 122C-132; 122C-221; 122C-206; 122C-261 through 122C-264.

.0123 COORDINATION AND CONTINUITY OF CLIENT CARE

~~(a) Admission staff shall evaluate the individual to determine that:~~

~~(1) there is the presence or probable presence of mental illness;~~

~~(2) the individual is in need of treatment or further evaluation at the facility; and~~

~~(3) admitting the individual to the hospital is an appropriate treatment modality.~~

~~(b) The individual shall be a resident of the region served by the hospital unless one or more of these exceptions occurs:~~

~~(1) A transient resident of another state who requires hospitalization shall be admitted to the hospital serving the region in which the client is found.~~

~~(2) A defendant who is committed to a state mental health facility for determination of capacity to proceed to trial (G.S. 15A-1002) may be admitted to the regional hospital that serves the defendant's region of residence, or the defendant may be admitted to the Forensic Unit at Dorothea Dix Hospital.~~

~~(3) An individual whose treatment needs have necessitated a cross regional admission from the hospital in his region. Cross regional admissions shall be arranged by the Deputy Director for mental health programs or his designee.~~

~~(4) In case of emergency, a client may be admitted to a hospital outside of the region of residence. Subsequent transfer may include transfer to the appropriate regional hospital and such transfer shall be in accordance with G.S. 122C-206.~~

~~(5) A client from any catchment area of the state may be considered for admission to the Clinical Research Unit of Dorothea Dix Hospital. In the case of a client of another regional hospital, application shall be made in accordance with G.S. 122C-206.~~

~~(c) An individual shall not be admitted to a hospital if:~~

~~(1) the person has chronic fixed organic conditions for which no psychiatric treatment exists and who is primarily in need of custodial care pending rest home or nursing home placement. However, such an individual may be admitted for a period not to exceed 60 days for observation or diagnostic evaluation;~~

~~(2) the person's treatment needs can be met locally;~~

~~(3) the person's admission is sought primarily because of a lack of living space or financial support; and~~

~~(4) the person's primary medical or surgical problem can be more appropriately treated in a general hospital.~~

(a) Each hospital in conjunction with each area program shall develop a process to assure ongoing communication between the hospital and area program regarding clients in treatment at the hospital. This process shall include provisions for case collaboration, particularly around treatment issues and issues related to discharge planning and community care. For minor clients and for adult clients adjudicated incompetent, such collaboration shall include the legally responsible person. The process shall include but is not limited to the following:

(1) specifically designated staff at both the hospital and area program to facilitate communication;

(2) routinely scheduled case management contact at hospital site;

(3) hospital staff visitation to area programs;

(4) telephone conferences; and

(5) a discharge plan developed in collaboration among hospital and area program staff and client.

(b) The process for ongoing communication shall be incorporated into each area program's written agreement with the state hospital as required by 10 NCAC 18J .0603 Written Agreements with State Facilities.

Statutory Authority G.S. 90-21.1; 122C-3; 122C-132; 122C-221; 122C-223; 143B-147.

.0124 NOTIFICATION OF CLIENT HEARING AND/OR DISCHARGE

~~The guardian of an incompetent adult may apply for the admission of the incompetent adult to a hospital with or without the consent of the incompetent adult. If the incompetent adult is admitted, a court hearing and judicial determination will be scheduled according to the procedures set forth in G.S. 122C-232. In the initial evaluation, admission staff shall determine that:~~

~~(1) there is the presence or probable presence of mental illness; and~~

~~(2) less restrictive treatment measures are likely to be insufficient. In making this judgment, the admission staff shall determine that:~~

~~(a) outpatient treatment or less intensive residential treatment measures would not alleviate the mental illness;~~

~~(b) there is no treatment program locally outside of the hospital that meets the needs of the individual; and~~

~~(c) the individual's primary need is not foster care or correctional placement.~~

(a) The hospital shall give the authorizing area program 72 hours notice of planned discharge of all clients except those clients for whom unplanned discharge precludes 72 hours notice. In those cases notice shall be given within 24 hours. If there is a disagreement between the hospital and area program regarding the planned discharge of a voluntary

client, the disagreement shall be resolved by the procedures specified in Rule .0126 of this Section.

(b) The hospital shall provide 24 hours notice to the authorizing area program prior to a court hearing, of the recommendations to be made at the hearing. At the time of this notification, a collaborative discharge contingency plan will be developed in case the judge does not order commitment.

(c) The Post-Institutional Plan, together with the items specified in Rule .0125 of this Section, shall be sent to the authorizing area program within 24 hours of discharge.

(d) A discharge summary shall be sent to the authorizing area program within 15 days of discharge.

Statutory Authority G.S. 122C-112; 143B-147.

.0125 PLACEMENT OF CLIENTS OUTSIDE THEIR COUNTY OF RESIDENCE

~~Prior to admitting a geriatric individual to the hospital, the area program shall:~~

~~(1) carefully prepare the geriatric individual and his family for the admission, because of the increased risk involved in moving elderly individuals;~~

~~(2) seek an agreement from referring rest homes, nursing homes and boarding homes to readmit the geriatric individual when he improves; and~~

~~(3) make appropriate arrangements for returning the geriatric individual to his caretaker, family or friend.~~

(a) If a discharge plan proposes that a client live in a facility outside his county of residence, hospital staff shall notify the authorizing area program so that the area program can begin making such a living arrangement. Hospital staff shall provide the authorizing area program with information which shall include:

(1) the client's characteristics;

(2) information regarding the characteristics of the facility being considered; and

(3) information regarding the facility's ability to serve the client being considered to live there.

(b) The authorizing area program shall contact the area program in the county of the facility to share client information, and collaboratively develop a plan for appropriate services provision, authorization, and payment.

(c) When a client discharged from a hospital moves to a facility outside his county of residence, the hospital shall send, at the time of discharge, the following records to the authorizing area program serving the client's county of residence:

(1) hospital's psychiatric evaluation;

(2) social history; and

(3) post-institutional plan.

In addition, the hospital discharge summary shall be sent to the authorizing area program within 15 days of discharge. It is the responsibility of this area program to share the information with the area program serving the client in the county of the facility.

Statutory Authority G.S. 122C-3; 122C-112; 122C-117; 143B-147.

.0126 RESOLUTION OF DIFFERENCES OF OPINION

~~(a) Each hospital in conjunction with each area program shall develop a process to assure ongoing communication between the hospital and area program regarding clients in treatment at the hospital. The process shall include provisions for case consultation, particularly around issues related to discharge planning. The process shall include but is not limited to the following:~~

~~(1) specifically designated staff at both the hospital and area program to facilitate communication;~~

~~(2) routinely scheduled case management contact at hospital site;~~

~~(3) hospital staff visitation to area programs;~~

~~(4) telephone conferences; and~~

~~(5) to the extent feasible, a discharge plan shall be developed for involuntary clients who may be released when the judge does not order a recommended commitment.~~

~~(b) The process for ongoing communication shall be incorporated into each area program's written agreement with the state hospital as required by 10 NCAC 18J .0603 (Written Agreements with State Facilities).~~

(a) Differences of opinion between area program staff and hospital staff regarding admission, treatment or discharge issues shall be resolved through negotiation involving appropriate hospital and area program staff, together with clients, legally responsible persons, and with client consent, appropriate family members up to and including the area program's director and the hospital's director, as appropriate.

(b) If resolution of issues regarding authorization, admission or discharge cannot be reached by the Directors of the two organizations, the dispute will be resolved following the procedures contained in 10 NCAC 18J .0800 Establishment of An Area Authority Appeals Panel, and Rules contained in 10 NCAC 14B .0300 Contested Cases, and continuing to the final level of appeal, if necessary, with procedures in G.S. 150B Appeal for Contested Cases.

(c) During the resolution of differences of opinion between area program and hospital staff, the client will be provided with the more conservative and secure treatment option.

Statutory Authority G.S. 143B-147.

.0127 REFERRALS OF MINORS FROM A NON-SINGLE PORTAL AREA

(a) In a non-single portal area, in addition to area program staff, a licensed physician or eligible psychologist may refer a minor directly to a hospital. This person will be known as the "referring agent."

(b) As part of the referring process, the referring agent

shall provide the evaluation and other information specified in Rules .0119 and .0120 of this Section.

(c) To assure appropriate planning for treatment, discharge, and aftercare, when a licensed physician or eligible psychologist makes a referral pursuant to this Rule, he or she shall be asked by the hospital to agree in writing to:

(1) continued involvement with the child and family during hospital treatment;

(2) participation in identification and coordination of community services that are essential to discharge planning; and

(3) provision of aftercare, as needed.

(d) If the referring agent does not sign the agreement described in Paragraph (c) of this Rule, the hospital staff shall consult with the minor's legally responsible person to determine a practitioner to participate in discharge and aftercare planning. The area program staff shall be considered as an option. The selected practitioner shall be considered to be the referring agent.

(e) For purposes of Rules .0121 through .0126 of this Section, the referring agent shall perform the consultation, communication and notice functions described for area program staff. The area program staff also shall participate and shall receive the notices prescribed in those Rules.

Statutory Authority G.S. 143B-147.

SECTION .0200 - VOLUNTARY ADMISSIONS, INVOLUNTARY COMMITMENTS AND DISCHARGES OF MINORS TO AND FROM REGIONAL PSYCHIATRIC HOSPITALS

.0205 SCOPE

~~For voluntary admission, involuntary commitment and discharge of minors to regional psychiatric hospitals, the rules in this Section shall be followed by hospital staff, area program staff, and other appropriate professionals as specified in G.S. 122C-222. Area program child and youth coordinators and hospital child and youth unit directors shall develop their policies and procedures regarding inpatient referrals and discharge planning in accordance with these rules. These rules do not apply to Wright School, Whitaker School or the Butner Adolescent Treatment Center (BATC).~~

Statutory Authority G.S. 122C-221 through 122C-223; 122C-224.7; 122C-261; 122C-262; 143B-147.

.0206 DEFINITIONS

~~For the purpose of the rules in this Section, the following terms shall have the meanings indicated:~~

~~(1) "Child and youth coordinator" means that individual charged by the area program to develop and administer mental health services for minors.~~

~~(2) "Child and youth unit director" means that individual charged by a regional psychiatric hospital to develop and administer mental health services for minors within the hospital.~~

~~(3) "Eligible psychologist" means a licensed practicing psychologist who has at least two years' clinical experience.~~

~~(4) "Emergency involuntary commitment" means admission to a hospital when a minor has met the criteria specified in G.S. 122C-262.~~

~~(5) "Hospital" means one of the regional psychiatric hospitals of the Division. Wright School, Whitaker School and the Butner Adolescent Treatment Center are excluded from this definition.~~

~~(6) "Involuntary commitment" means the process of admission to a hospital as set forth in G.S. 122C, Article 5, Parts 1, 6 and 7.~~

~~(7) "Legally responsible person" means the same as defined in G.S. 122C-3.~~

~~(8) "Referring agent" means the practitioner authorized to refer minor clients to a hospital. In a single portal area this means the child and youth coordinator or his designee. In a non single portal area, this means the child and youth coordinator or his designee, a licensed physician or an eligible psychologist.~~

~~(9) "Regional screening committee" means the regional committee that reviews the records of minors for the purpose of making placement recommendations to Whitaker School. The committee also reviews records of hard to place minors upon request by area programs for the purpose of consultation and facilitation.~~

~~(10) "Single portal area" means the same as defined in G.S. 122C-3.~~

~~(11) "Voluntary admission" means admission to a hospital for evaluation and treatment with the consent of the minor's legally responsible person, or self admission in accordance with G.S. 122C-223.~~

~~(12) "Willie M. coordinator" means that individual charged by the area program to develop and oversee mental health services for Willie M. class members.~~

Statutory Authority G.S. 122C-3; 122C-221; 143B-147.

.0207 WRITTEN CONSENT FOR RELEASE OF INFORMATION

~~Except as otherwise provided in G.S. 122C-53 through G.S. 122C-56, the written consent of the minor's legally responsible person shall be obtained prior to the release of confidential information.~~

Statutory Authority G.S. 122C-53 through 122C-56; 143B-147.

.0208 WRITTEN APPLICATION FOR VOLUNTARY ADMISSIONS

~~(a) The minor's legally responsible person may apply in writing for the admission of the minor to a hospital with or without the consent of the minor.~~

~~(b) In an emergency situation, a minor may be voluntarily admitted upon his own written application, in accordance with the provisions of G.S. 122C-223.~~

Statutory Authority G.S. 122C-3; 122C-221 through 122C-223; 143B-147.

.0209 MANDATORY SCREENING

~~Except as provided in G.S. 122C-223 and 122C-262, all minors shall be screened in accordance with Rule .0214 of this Section prior to admission to a hospital.~~

Statutory Authority G.S. 122C-221 through 122C-223; 122C-262; 143B-147.

.0210 TELEPHONE NOTIFICATION OF HOSPITAL BY REFERRING AGENT

~~(a) During working hours, the referring agent shall telephone the child and youth unit director or his designee regarding an imminent voluntary admission or involuntary commitment.~~

~~(b) After working hours, the referring agent shall telephone the hospital admission staff regarding an imminent voluntary admission or involuntary commitment. Immediately upon receiving such telephone notification, the hospital admissions staff shall notify the designee of the child and youth unit director.~~

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

.0211 REFERRALS FROM A SINGLE PORTAL AREA

~~(a) In a single portal area, the child and youth coordinator or his designee may refer a minor directly to a hospital.~~

~~(b) In a single portal area, all professionals and agencies shall refer all prospective minor voluntary admissions and involuntary commitments to the child and youth coordinator or his designee.~~

~~(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the child and youth coordinator or his designee as specified in this Rule.~~

Statutory Authority G.S. 122C-221; 122C-223; 122C-261; 122C-262; 143B-147.

.0212 REFERRALS FROM A NON-SINGLE PORTAL AREA

~~(a) In a non-single portal area, licensed physicians, eligible psychologists or the child and youth coordinator or his designee may refer a minor directly to a hospital.~~

~~(b) In a non-single portal area, all professionals and agencies other than licensed physicians and eligible psychologists shall refer all prospective minor voluntary admissions and involuntary commitments to the persons listed in Paragraph (a) of this Rule.~~

~~(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the appropriate persons or agencies as specified in this Rule.~~

Statutory Authority G.S. 122C-222; 122C-223; 122C-261; 122C-262; 143B-147.

.0213 USE OF STANDARDIZED REFERRAL FORM

~~All referrals shall be in writing on the standardized referral form, which is available through the area mental health program, in duplicate. One copy of the form shall be filed at the area program and one copy shall be sent to the hospital.~~

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

.0214 SCREENING BY REFERRING AGENT

~~(a) As part of the referral process for hospital admission, except admissions under G.S. 122C-223 and 122C-262, the appropriate referring agent, as specified in Rules .0211(a) and .0212(a) of this Section, shall determine that:~~

~~(1) there is the presence of mental illness; and~~

~~(2) less restrictive treatment measures are likely to be ineffective. In making this judgment, the referring agent shall determine that:~~

~~(A) outpatient treatment, day hospitalization or treatment, or less intensive residential treatment measures would not alleviate the mental illness;~~

~~(B) there is no local inpatient unit available that meets the needs of the minor; and~~

~~(C) the minor's primary need is not foster care, group child care or correctional placement.~~

~~(b) Additionally, the referring agent shall provide the following written information, to the extent possible:~~

~~(1) name of the professional at the area program or other setting who has provided diagnostic or treatment services to the client;~~

~~(2) full name of client, including maiden name, if applicable;~~

~~(3) legal county of residence;~~

~~(4) birthdate;~~

~~(5) previous admissions to any state facility;~~

~~(6) name, address and telephone number of the legally responsible person or, if there is no legally responsible person, the minor's next of kin;~~

~~(7) any medical problems, including pertinent laboratory data and treatment;~~

~~(8) current psychiatric and other medications;~~

~~(9) history of compliance with medications and~~

~~aftercare instructions;~~

~~(10) alternatives attempted or considered prior to referral to hospital;~~

~~(11) goal of hospitalization specifying the treatment problems that the hospital should address;~~

~~(12) specific suggestions for programming and other treatment planning recommendations; and~~

~~(13) discharge plans to include the relevant information on placement and other special considerations of the client upon discharge from the hospital.~~

~~(c) The written information shall accompany the minor to the hospital.~~

Statutory Authority G.S. 122C-221 through 122C-223; 122C-261; 122C-262; 143B-147.

.0215 WRITTEN AGREEMENTS FOR A NON-SINGLE PORTAL AREA

~~(a) In a non-single portal area, when a licensed physician or eligible psychologist who is not affiliated with the area program makes a referral of a minor for hospital admission, he shall be asked by the hospital to sign a written agreement which promises the following:~~

~~(1) continued involvement with the child and family during hospital treatment;~~

~~(2) participation in identification and coordination of community services that are essential to discharge planning; and~~

~~(3) provision of aftercare, as needed, following discharge.~~

~~(b) The purpose of this written agreement is to assure that appropriate planning for treatment, discharge and aftercare will occur.~~

~~(c) If the referring agent does not sign the agreement described in Paragraph (a) of this Rule, the hospital staff shall consult with the minor's legally responsible person to determine his choice of a practitioner to participate in discharge and aftercare planning. The designated person shall thereafter be called the referring agent.~~

~~(1) If the legally responsible person names a practitioner, the hospital staff shall obtain the legally responsible person's written consent to contact the practitioner chosen in order to request the practitioner's participation in discharge and aftercare planning.~~

~~(2) If the legally responsible person does not know of a practitioner, the hospital staff shall suggest the child and youth coordinator in the area program in the catchment area where the minor resides. The hospital staff shall obtain the legally responsible person's written consent to contact the child and youth coordinator and shall request the child and youth coordinator's participation in discharge and aftercare planning.~~

~~(3) If the legally responsible person does not know of a practitioner and declines to choose the child and youth coordinator, the hospital staff may suggest other practitioners. If the legally responsible person selects a practitioner other than the child and youth coordinator, the hospital staff shall proceed as described in Subparagraph (c)(1) of this Rule.~~

~~(4) If the legally responsible person refuses to permit the involvement of any practitioner in discharge and aftercare planning or refuses to sign the written consent described in Subparagraph (c)(1) or (c)(2) of this Rule, and in the opinion of the responsible professional, such refusal would be detrimental to the minor, the responsible professional shall so state in writing, and thereafter, the hospital staff shall so advise the child and youth coordinator in the area program in the catchment area where the minor resides.~~

Statutory Authority G.S. 122C-222; 122C-261; 143B-147.

.0216 INFORMATION FOR TREATMENT PLANNING

~~(a) The referring agent shall send the following client information, if available, and in accordance with G.S. 122C-53 through 122C-56, to the appropriate hospital admissions office within three working days following the minor's voluntary admission or involuntary commitment to the hospital. This information shall include but not be limited to the following:~~

~~(1) family history, current composition, current functioning, and motivation for treatment;~~

~~(2) child or youth's developmental history, highest level of functioning in the past, and current level of functioning;~~

~~(3) relationship with family, peers and others;~~

~~(4) personality characteristics and degree of emotional or organic impairment;~~

~~(5) how, and, under what circumstances, the impairment is most manifest;~~

~~(6) intellectual level, past and current;~~

~~(7) educational academic functioning, and school history;~~

~~(8) strengths, individual and family;~~

~~(9) long range planning; and~~

~~(10) goals for hospitalization.~~

~~(b) The information required in Paragraph (a) of this Rule shall be used by hospital staff in developing the treatment plan.~~

Statutory Authority G.S. 122C-55(a); 143B-147.

.0217 NOTIFICATION BY HOSPITAL OF ADMISSION/DENIAL

~~(a) The child and youth unit director shall notify the referring agent within 24 hours regarding the following:~~

~~(1) the decision to admit the minor and the~~

~~admission date; or~~

~~(2) the decision to deny admission of the minor, including the reasons for the denial and any recommendations for treatment alternatives.~~

~~(b) In instances when the minor has not been referred by an area program, the hospital shall notify the referring agent and the appropriate area program within one working day regarding the hospital's decision to admit or deny admission to the minor.~~

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0218 SHARING OF INFORMATION WITH REFERRING AGENT

~~(a) During the formulation of the minor's treatment plan, and in accordance with G.S. 122C-53 through 122C-56, the child and youth unit director shall share the following information with the referring agent:~~

~~(1) goals for hospitalization;~~

~~(2) anticipated length of stay;~~

~~(3) expectations regarding family involvement;~~

~~(4) expectations regarding area program and other community agency involvement;~~

~~(5) dates of hospital diagnostic or treatment conference; and~~

~~(6) dates of discharge planning conference.~~

~~The information in Subparagraphs (5) and (6) in this Rule shall be provided as early as possible to allow for referring agent participation.~~

~~(b) The child and youth unit director shall notify the referring agent concerning any significant changes in the minor's treatment plan.~~

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0219 ONGOING INFORMATION PROVIDED BY REFERRING AGENT

~~During the minor's hospitalization, the referring agent shall keep the child and youth unit director informed regarding the following:~~

~~(1) availability of appropriate community resources;~~

~~(2) relevant information pertaining to the family's change in circumstances;~~

~~(3) ability of other agencies to participate with treatment; and~~

~~(4) relevant educational material to aid hospital in educational planning as provided by the school system.~~

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0220 FAILURE OF AREA PROGRAM TO PARTICIPATE IN PLANNING

~~If the referring agent is the area program, and the area program fails to participate in planning for the treatment, discharge and aftercare of the minor, the child and youth unit director shall notify the child and youth coordinator. If appropriate area program participation does not occur after such notification, the child and youth unit director shall notify the area director.~~

Statutory Authority G.S. 122C-221; 143B-147.

.0221 EMERGENCY INVOLUNTARY COMMITMENT

~~(a) Any minor who meets criteria for inpatient commitment pursuant to G.S. 122C-262 shall be admitted to the child and youth unit whether or not the minor has been screened by a referring agent.~~

~~(b) In those instances where the minor has been committed without screening by a referring agent, the hospital shall notify, within one working day, the area program in the catchment area where the minor resides of the emergency commitment.~~

Statutory Authority G.S. 122C-262; 143B-147.

.0222 EMERGENCY ADMISSIONS/ COMMITMENTS AND BED AVAILABILITY

~~(a) When a minor has been admitted to a hospital in accordance with Rule .0208(b) of this Section and no bed is available in the child and youth unit, the hospital and the area program in the catchment area where the minor resides shall make every effort to locate an alternate placement. If no other placement is available, the child shall be admitted to the hospital and placed in the most appropriate available bed.~~

~~(b) When a minor has been committed to a hospital in accordance with Rule .0221 of this Section and no bed is available in the child and youth unit, the hospital and either the referring agent, if the minor has been screened, or the area program in the catchment area where the minor resides, if the minor has not been screened, shall make every effort to locate an alternative placement. If no other placement is available the child shall be admitted to the hospital and placed in the most appropriate available bed.~~

Statutory Authority G.S. 122C-223; 122C-262; 143B-147.

.0223 AREA PROGRAM PROCEDURES/ UNSCREENED EMERGENCY COMMITMENTS

~~(a) In those instances where the minor has not been screened by a referring agent prior to emergency commitment to a hospital, the area program in the catchment area where the minor resides shall appoint a staff person for the minor within two working days of receipt of notification of the commitment.~~

~~(b) The staff person shall promptly communicate with the child and youth unit director or his designee to arrange a comprehensive treatment planning conference. The staff person shall also communicate with the hospital child and youth unit director or his designee regarding discharge~~

~~planning.~~

Statutory Authority G.S. 122C-262; 143B-147.

.0224 DISCHARGE PLANNING

~~Discharge planning shall occur for each minor admitted or committed to the hospital.~~

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

.0225 PARTICIPANTS IN DISCHARGE PLANNING

~~(a) The hospital shall consult with the referring agent to determine who will participate in discharge planning.~~

~~(b) In those instances where there is no referring agent, the staff person appointed pursuant to Rule .0223 of this Section shall be consulted to determine who will participate.~~

~~(c) If the hospital does not request the referring agent's participation in discharge planning, the referring agent shall notify the child and youth unit director.~~

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

.0226 DISCHARGE OF MINOR

~~(a) The child and youth unit director shall discharge a minor from treatment when it is determined that the minor is no longer mentally ill or no longer in need of treatment at the hospital.~~

~~(b) The minor's legally responsible person may file a written request for discharge from the hospital as specified in G.S. 122C-224.7.~~

~~(c) The child and youth unit director shall notify the referring agent and the legally responsible person, and the child and youth coordinator in the area program as soon as a decision to release the minor from the hospital is made.~~

Statutory Authority G.S. 122C-224.7; 143B-147.

.0227 DISCHARGE PLANNING AND WRITTEN PLAN

~~(a) An interdisciplinary meeting shall be held to formulate the discharge plan for the minor. This meeting shall include, but need not be limited to, the parent or legally responsible person and professionals involved in services for the minor. The planning shall include, but need not be limited to, the following:~~

~~(1) a review of the minor's presenting problems, social circumstances and relevant case history;~~

~~(2) a discussion of follow-up treatment alternatives based on realistic community alternatives; and~~

~~(3) the assignment of responsibilities for implementation of the discharge plan.~~

~~(b) A written discharge plan shall be developed based on the results of the interdisciplinary meeting. Copies of the plan shall be distributed, and in accordance with G.S. 122C-53 through 122C-56, to the referring agent and other relevant parties within five working days.~~

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

.0228 DISCHARGE PLAN IMPLEMENTATION FOR AREA PROGRAM REFERRALS

~~(a) When a minor referred by an area program is discharged, the minor's staff person shall be responsible for supervising the implementation of the minor's discharge plan.~~

~~(b) The following staff shall be available to assist the minor's staff person in implementing the minor's discharge plans:~~

~~(1) area program child and youth coordinator;~~

~~(2) child and youth staff;~~

~~(3) other appropriate area program staff;~~

~~(4) area program Willie M. coordinator; and~~

~~(5) regional screening committee.~~

Statutory Authority G.S. 122C-221; 122C-224.7; 143B-147.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 26H .0212 and .0213.

Temporary: *These Rules were filed as temporary amendments effective September 15, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on November 1, 1995 at NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Bldg., Room 132, Raleigh, NC.*

Reason for Proposed Action: *These additional payments are necessary to provide payments that are adequate to participating Hospitals for Medicaid costs and to assist large public hospitals that provide a disproportionate share of such services.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted by November 1, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal note is available upon written request from the same address.*

Fiscal Note: *These Rules affect the expenditure or distribution of State funds subject to the Executive Budget*

Act, Article 1 of Chapter 143.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0212 EXCEPTIONS TO DRG REIMBURSEMENT

(a) Covered psychiatric and rehabilitation inpatient services provided in either specialty hospitals, Medicare recognized distinct part units (DPU), or other beds in general acute care hospitals shall be reimbursed on a per diem methodology.

(1) For the purposes of this Section, psychiatric inpatient services are defined as admissions where the primary reason for admission would result in the assignment of DRGs in the range 424 through 432 and 436 through 437.

For the purposes of this Section, rehabilitation inpatient services are defined as admissions where the primary reason for admissions would result in the assignment of DRG 462. All services provided by specialty rehabilitation hospitals are presumed to come under this definition.

(2) When a patient has a medically appropriate transfer from a medical or surgical bed to a psychiatric or rehabilitative distinct part unit within the same hospital, or to a specialty hospital the admission to the distinct part unit or the specialty hospital shall be recognized as a separate service which is eligible for reimbursement under the per diem methodology. Transfers occurring within general hospitals from acute care services to non-DPU psychiatric or rehabilitation services are not eligible for reimbursement under this Section. The entire hospital stay in these instances shall be reimbursed under the DRG methodology.

(3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing psychiatric services as derived from the most recent as filed cost reports.

(4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.

(5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recent filed cost reports.

(6) Rates established under this Paragraph are adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(5) of this Section.

(b) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Human Resources and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools will be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual. This Manual referred to as, (HCFA Publication #15-1) is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from the U.S. Department of Commerce, National Technical Information Service, Subscription Department, 5285 Port Royal Road, Springfield, VA 22161 at a cost of one hundred forty seven dollars ($147.00). Purchasing instructions may be received by calling (703) 487-4650. Updates are available for an additional fee. The Division shall utilize the DRG methodology to make interim payments to providers covered under this Paragraph, setting the hospital unit value at a level which can best be expected to approximate reasonable cost. Interim payments made under the DRG methodology to these providers shall be retrospectively settled to reasonable cost.

(c) When the Norplant contraceptive is inserted during an inpatient stay the current Medicaid fee schedule amount for the Norplant kit will be paid in addition to DRG reimbursement. The additional payment for Norplant will not be paid when a cost outlier or day outlier increment is applied to the base DRG payment.

(d) Hospitals operating Medicare approved graduate medical education programs shall receive a per diem rate adjustment which reflects the reasonable direct and indirect costs of operating these programs. The per diem rate adjustment will be calculated in accordance with the provisions of Rule .0211 Paragraph (f) of this Section.

(e) For the 12-month period ending September 30, 1995, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of Medicaid inpatient discharges shall be entitled to an additional payment in an amount determined by the Director of the Division of Medical Assistance, subject to the following provisions:

(1) The maximum payments authorized by this Paragraph for public hospitals that qualify under the criteria in Part A of this Subparagraph shall be calculated by ascertaining the reasonable cost of inpatient and outpatient hospital Medicaid services, plus the reasonable direct and indirect costs attributable to Medicaid services of operating Medicare approved graduate medical education programs, less Medicaid payments received or to be received for these services.

With respect to qualifying hospitals that are not public hospitals qualified under Part A of this Subparagraph, the maximum payment authorized by this Paragraph shall be calculated by ascertaining 64.71 percent of the unreimbursed reasonable cost calculated by use of the methodology described in the preceding sentence, not to exceed in the aggregate for all such hospitals fifty one million seven hundred thousand dollars ($51,700,000). For purposes of this Subparagraph:

(A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph and:

(i) was owned or operated by a State (or by an instrumentality or a unit of government within a State) throughout the 12-month period ending September 30, 1995;

(ii) indicated its legal entity status as a government unit on the Hospital License Renewal Application filed with the Division of Facility Services, North Carolina Department of Human Resources for the 1995 calendar year; and

(iii) submits to the Division of Medical Assistance on or before September 20, 1995 by use of a form prescribed by the Division, a certificate of public expenditures to support the non-federal share of the payment it will receive pursuant to this Paragraph.

(B) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual. This Manual, referred to as HCFA Publication #15-1, is hereby incorporated by reference including subsequent amendments and editions. A copy of this Manual is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from the US Department of Commerce, National Technical Information Service, Subscription Department, 5285 Port Royal Road, Springfield, VA 22161, at a cost of one hundred forty-seven dollars ($147.00). Purchasing instructions may be received by calling (703) 487-4650. Updates are available for an additional fee.

(C) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received except for payments received or to be received pursuant to 10 NCAC 26H .0213(d).

(2) Should 64.71 percent of the unreimbursed reasonable cost of Medicaid services for qualifying hospitals that are not qualified public hospitals be determined by the Director of the Division of Medical Assistance to exceed the sum of fifty one million seven hundred thousand dollars ($51,700,000), the maximum payment of fifty one million seven hundred thousand dollars ($51,700,000) to such hospitals authorized by this Paragraph shall be prorated among such hospitals based on unreimbursed reasonable costs.

(3) Payments authorized by this Paragraph shall be made on or before September 30, 1995 solely on the basis of an estimate of costs incurred and payments received for Medicaid services during the 12 months ending September 30, 1995. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on cost reports for fiscal years ending in 1994 filed before September 15, 1995 and supplemented by such additional financial information as is available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that such additional financial information is reliable and relevant.

(4) Solely to ensure that estimated payments pursuant to Subparagraph (3) of this Paragraph do not exceed the hospital specific and state aggregate upper limits to such payments established by applicable federal law and regulation, such payments shall be cost settled as determined by an independent CPA furnished by the provider, based on cost reports covering the 12 months ending September 30, 1995, and hospital recipients of such payments shall promptly refund such payments if and to the extent that such payments exceed the applicable upper limit. No additional payments shall be made in connection with the cost settlement.

(5) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial

information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

(1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and

(2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or

(3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:

(A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and

(B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or

(4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or

(5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or

(6) Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) and UNC Hospitals operated by the University of North Carolina.

(b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share ~~adjustments.~~ adjustments:

(1) An additional one time payment for the 12-month period ending June 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the public hospital having the largest number of Medicaid inpatient days of all hospitals as determined in Subparagraph (a)(5) of this Rule. The payment limits of the Social Security Act, Title XIX, section 1923(g)(1)(B) require that when added to other DSH payments, the additional disproportionate share payment will not exceed 200 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. This payment may be doubled in accordance with section 1923(g)(2). The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set for the State by HCFA.

(2) An additional one time payment for the 12-month period ending September 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the public hospital having the largest number of Medicaid inpatient days of all hospitals as determined in Subparagraph (a)(5) of this Rule, determined without regard to the inpatient days of either the hospital that qualifies for disproportionate share payments under the provisions of Subparagraph (b)(1) of this Rule or the hospitals that qualify for payments under 10 NCAC 26H .0212(b). The payment limits of the Social Security Act, Title XIX, section 1923(g)(1) applied to this payment require that when this payment is added to other DSH payments, the additional disproportionate share payment will not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set for the State by HCFA.

(3) The payments authorized by Subparagraphs (1) and (2) of this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(c) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

(1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.

(2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.

(3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) divided by three.

In Subparagraph (c)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

(d) Effective January 1, 1995 (see Subparagraph (6) of this Paragraph) and subject to the availability of funds, hospitals that qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (5) of this Rule and that also operate Medicare approved graduate medical education programs shall be eligible for disproportionate share payments for hospital inpatient services in addition to other payments made under the North Carolina Medicaid Hospital DRG reimbursement methodology from a disproportionate share pool under the circumstances specified in Subparagraphs (1) and (2) of this Paragraph:

(1) Qualifications effective January 1, 1995 through September 30, 1995 are based on cost report data and financial information for the fiscal year ending in 1993 as submitted to the Division of Medical Assistance on or before September 1, 1994. Qualifications for the 12 month period beginning October 1, 1995 and subsequent 12 month periods beginning October 1 of each year, shall be based on cost report data and financial information for the fiscal year ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before September 1 immediately preceding the 12 month period beginning October 1 for which eligibility is being determined.

(2) Additional payments for the period from January 1, 1995 through September 30, 1995 shall be made based on hospital cost per case mix index adjusted discharge, as established by Exhibit 5.1 contained in the report entitled "DRG-Based Prospective Payment Methodology for Inpatient Services" dated January 25, 1995 prepared by Myers and Stauffer, Chartered Certified Public Accountants, for the North Carolina Division of Medical Assistance and arranged from low to high as specified in Parts (A) and (B) of this Subparagraph:

(A) Hospitals with a calculated cost per case mix index adjusted discharge cost of three thousand one hundred fifty six dollars ($3,156) or less shall be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement;

(B) Hospitals with a calculated cost per case mix index adjusted discharge cost of more than three thousand one hundred fifty six dollars ($3,156) shall be entitled to additional payments in an amount that when added to other Medicaid payments may not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.

(3) Additional payments for the 12 month period beginning October 1, 1995 and for each subsequent 12 month period shall be determined as specified in Parts (A), (B) and (C) of this Subparagraph:

(A) The calculated cost per case mix index adjusted discharge amount of three thousand one hundred fifty six ($3,156) shall be updated annually by the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management;

(B) Each hospital's cost per case mix index adjusted discharge shall be ascertained by analysis of charges for Medicaid inpatient claims reimbursed under the DRG

methodology and paid during the immediately preceding calendar year, multiplied by each hospital's ratio of cost to charges derived from cost report data and financial information for the fiscal year of each hospital ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before the first day of September immediately preceding the 12 month period beginning October 1 for which eligibility is being determined; and

(C) Hospitals with a case mix index adjusted discharge cost equal to or less than three thousand one hundred fifty six ($3,156) plus any annual updated amount shall be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement; hospitals with calculated costs per case mix index adjusted discharge greater than three thousand one hundred fifty six ($3,156) plus any annual updated amount shall be entitled to additional payments in an amount that when added to other Medicaid payment does not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.

(4) Payments shall be made on an estimated basis no less frequently than quarterly during the period for which such payments are to be made. Estimated payments shall be based on costs incurred and payments received for Medicaid inpatient DRG services during the most recent fiscal year for which the Division of Medical Assistance has a completed cost report. Estimated payments made to each hospital shall be cost settled as determined by an independent CPA furnished by the provider, based on cost reports for the period for which payments are made, and appropriate adjustments shall be made to assure that such payments do not exceed the hospital's net cost of providing services to Medicaid patients.

(5) Payments may not exceed the amount of funds available as determined by the Director of the Division of Medical Assistance. Should available funds be insufficient to pay in full the authorized payments, the Division of Medical Assistance shall ascertain maximum payments allowable and the funds available to qualifying hospitals shall be prorated on that basis.

(6) The changes to disproportionate share payments authorized by this Paragraph are in accordance with G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission (Division of Facility Services) intends to adopt rules cited as 10 NCAC 42B .1209; 42C .2010 and 42D .1409.

Temporary: *These Rules were filed as temporary adoptions effective October 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on December 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC.*

Reason for Proposed Action: *Adopt permanent version of temporary rules which became effective October 1, 1995. Pursuant to Senate Bill 864 which was ratified by the 1995 General Assembly, the Department may adopt emergency rules to implement provisions contained in the bill including the one regarding competency evaluation of staff in adult care homes who perform personal care services.*

Comment Procedures: *Comments may be presented anytime before or at the public hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Sharnese Ransome, Special Assistant, N.C. Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919/733-3055.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B - LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .1200 - PERSONNEL

.1209 COMPETENCY OF STAFF PROVIDING PERSONAL CARE

(a) The facility shall ensure that staff who provide personal care to residents perform only those personal care tasks for which they have demonstrated competency to the facility administrator or a person designated by the administrator.

(b) The facility shall maintain documentation of the competency evaluation of staff who provide personal care that is kept current, filed in an orderly manner and made available for review by the Department of Human

Resources.

Statutory Authority G.S. 131D-2; 131D-4.3; 143B-153.

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2010 COMPETENCY OF STAFF PROVIDING PERSONAL CARE

(a) The facility shall ensure that staff who provide personal care to residents perform only those personal care tasks for which they have demonstrated competency to the facility administrator or a person designated by the administrator, except when the administrator is also the personal care staff.

(b) The facility shall maintain documentation of the competency evaluation of staff who provide personal care that is kept current, filed in an orderly manner and made available for review by representatives of the Department of Human Resources.

Statutory Authority G.S. 131D-2; 131D-4.3; 143B-153.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1400 - PERSONNEL

.1409 COMPETENCY OF STAFF PROVIDING PERSONAL CARE

(a) The facility shall ensure that staff who provide personal care to residents perform only those personal care tasks for which they have demonstrated competency to the facility administrator or a person designated by the administrator.

(b) The facility shall maintain documentation of the competency evaluation of staff who provide personal care and their supervisors that is kept current, filed in an orderly manner and made available for review by representatives of the Department of Human Resources.

Statutory Authority G.S. 131D-2; 131D-4.3; 143B-153.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10F .0339, .0360; and adopt rule cited as 15A NCAC 10K .0003.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on October 19, 1995 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.*

Reason for Proposed Action:
15A NCAC 10F .0339, .0360 *- To regulate boat speeds in congested areas.*
15A NCAC 10K .0003 *- To establish criteria for hunter safety instructor certification.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 2, 1995 - November 1, 1995. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, NC 27604-1188.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0339 MCDOWELL COUNTY

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

(1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
(2) that area adjacent to the shoreline of the Marion Moose Club property;
(3) that area known as Morgan Cove;
(4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
(5) that area within 50 yards of the shoreline at Burnett's Landing;
(6) the cove area adjacent to the State Park swimming area;
(7) the cove area adjacent to the State Park picnic area and dock;
(8) that area within 50 yards of camping areas in the Lake James State Park as designated by the appropriate markers;
(9) that area within 50 yards of the boat launching ramp at the Marion Lake ~~Club.~~ Club;
(10) that area within 50 yards in either direction from the marina docks in Plantation Point Cove.

(b) Speed Limit. No person shall operate any motorboat or 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 shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

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

.0360 GRAHAM COUNTY

(a) Regulated Area. This Rule applies to the waters and portions of waters described as follows:

(1) Lake Santeetlah Boat Dock on Lake Santeetlah in Graham County.

(2) Entrance of Fontana Boat Dock in Fontana Lake in Graham County.

(3) Thomas Boat Dock on Fontana Lake in Graham County.

(4) Crisp's Boat Dock, Panther Creek on Fontana Lake in Graham County.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of the regulated areas as described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Graham County Board of Commissioners is designated as a suitable agency for the placement and maintenance of markers implementing this Rule.

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

SUBCHAPTER 10K - HUNTER SAFETY COURSE

.0003 INSTRUCTOR CERTIFICATION REQUIREMENTS

(a) Be 21 years of age upon application.

(b) Be a graduate of a Basic Hunter Education Course approved by the Wildlife Resources Commission. Approved courses must satisfy the requirements set out in 15A NCAC 10K .0001 or be certified by a state or province that meets and or exceeds the requirements set out in 15 NCAC 10K .0001.

(c) Complete the North Carolina Hunter Education Instructors Application.

(d) Complete the 12 hour Hunter Education Instructors Course, and score 75 percent or higher on the written examination.

(e) Submit to a background investigation including a records check which reveals no disqualifying convictions. Disqualifying convictions are listed as follows:

(1) a felony; or

(2) a crime or unlawful act defined as a "Class 1" misdemeanor within the five year period prior to the date of application; or

(3) any conviction of the game and fish law which would require a mandatory suspension and or revocation of a license as indicated in G.S. 113-276.3 within the three year period prior to the date of application.

Statutory Authority G.S. 113-134; 113-270.1A.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 13A .0006 and adopt 13A .0019.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC.*

Reason for Proposed Action: *No additional fiscal impact on State or local government as these wastes are currently regulated. These amendments to the rules streamline hazardous waste management regulations governing the collection and management of certain widely generated wastes, known as "universal wastes." Amendments proposed cover hazardous waste batteries (e.g., nickel cadmium), certain hazardous waste pesticides, and mercury-containing thermostats. By reducing regulatory requirements, the State will encourage manufacturers to establish environmentally sound collection programs, and retailers to participate in them. Although households and small businesses produce much of these wastes, retailers were previously reluctant to accept them because of concerns that some of the wastes might be from regulated hazardous waste generators.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.*

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES

THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0006 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) 40 CFR 261.1 through 261.9 ~~261.8~~ (Subpart A), "General", are ~~have been~~ incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are ~~have been~~ incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are ~~have been~~ incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through 261.35 (Subpart D), "Lists of Hazardous Wastes" are ~~have been~~ incorporated by reference including subsequent amendments and editions.

(e) The Appendices to 40 CFR Part 261 are ~~have been~~ incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c); 150B-21.6.

.0019 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT - PART 273

(a) 40 CFR 273.1 through 273.5 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 273.10 through 273.20 (Subpart B), "Standards for Small Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 273.30 through 273.40 (Subpart C), "Standards for Large Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 273.50 through 273.56 (Subpart D), "Standards for Universal Waste Transporters" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 273.60 through 273.62 (Subpart E), "Standards for Destination Facilities" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 273.70 (Subpart F), "Import Requirements" is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 273.80 through 273.81 (Subpart G), Petitions to include Other Wastes Under 40 CFR Part 273 are incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c); 150B-21.6.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .1801 - .1814 and .1818.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 pm on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.*

Reason for Proposed Action: *The lodging rules have not been comprehensively reviewed since 1976. In intervening years, industry practice and statutes have changed and health science has advanced.. In addition, certain areas were in need of clarification due to confusion that was created by unclear wording. The proposed changes are intended to cause the lodging rules to be clearer and reflect current practice, law and science.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Susan Grayson, Food, Lodging and Institutional Sanitation Branch Head, PO Box 27687, Raleigh, NC 27611-7687. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Ms. Grayson at (919) 715-0926. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to made during the public hearing process.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1800 - SANITATION OF LODGING

PLACES

.1801 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) ~~(3)~~ "Department" ~~shall mean~~ means the ~~Secretary of~~ North Carolina Department of Environment, Health, and Natural Resources. ~~or his authorized representative.~~ The term also means the authorized representative of the Department.

(2) ~~"Employees" means and includes all janitors, maids, porters, and any others whose duties include the cleaning of rooms, toilets, or other parts of the building, or the carrying of ice or ice water to guests.~~ "Person" means person as defined in G.S. 130A-2.

(3) ~~(5) The lobby of any lodging place~~ "Lobby" means that room or area in which guests ordinarily register.

(4) ~~(1)~~ "Lodging ~~place~~ establishment" means all hotels, motels, inns, tourist homes, and other places providing lodging accommodations for pay. ~~pay, not including private homes which provide lodging to permanent house guests.~~ Facilities described in G.S. 130A-250 (1) through (5) shall not be regulated as lodging establishments.

(5) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

(6) "Single-service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.

~~(4) "Local health director" shall mean local health director as defined in G.S. 130A-2(6), or his authorized representative.~~

~~(5) "Sanitarian" shall mean a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.~~

Statutory Authority G.S. 130A-248.

.1802 PERMITS

(a) No person shall operate a lodging ~~place~~ establishment within the State of North Carolina who does not possess a valid permit from the Department.

(b) No permit to operate shall be issued until an ~~inspection~~ evaluation by a representative of the Department shows that the establishment complies with these Rules.

(c) Upon transfer of ownership of an existing lodging ~~place~~ establishment or upon transfer of the lease of the establishment from one person to another, the Department shall evaluate the facility to determine compliance with the rules. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of a transitional permit, the owner or operator or leasee shall have corrected the noncompliant items and obtained a permit, or the lodging place shall not continue to operate.

(d) The Department may impose conditions on the issuance of a permit or a transitional permit. Conditions may be specified for one or more of the following areas:

(1) The number of bedrooms or persons housed.

(2) The amount of laundry or kitchen and tableware washing equipment on the premises.

(3) Time schedules in completing minor construction items.

(4) Modification or maintenance of water supplies, water use fixtures and sanitary sewage systems.

(5) Use of facilities for more than one purpose.

(6) Continuation of contractual arrangements upon which basis the permit was issued.

(7) Submission and approval of plans for renovation.

(8) Any other conditions necessary for a lodging place to remain in compliance with this Section.

(e) Permits or transitional permits are issued by and ~~inspections~~ evaluations made by the Department.

(f) A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with 130A-23. A new permit to operate shall be issued only after the establishment has been reinspected by the Department and found to comply with this Section. This reinspection will be conducted within a reasonable length of time, not to exceed 30 days, after the request is made by the operator.

Statutory Authority G.S. 130A-248.

.1803 PUBLIC DISPLAY OF GRADE CARD

Whenever an inspection of a lodging ~~place~~ establishment is made, the ~~sanitarian~~ Department shall remove the existing grade card, issue a grade card, and post the new grade card in a conspicuous place where it may be readily observed by the public upon entering the facility. The owner, ~~owner, or~~ operator or leasee shall be responsible for keeping the grade card posted and readily visible at the location designated by the ~~sanitarian~~ Department at all times.

Statutory Authority G.S. 130A-248.

.1804 INSPECTIONS

(a) Upon request of the management, ~~a reinspection~~ an inspection will be made. ~~In the case of establishments that have been closed for failure to comply with these Rules, a survey to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the sanitarian, and an inspection for the purpose of establishing the sanitation grade may be made at any time after the establishment has been in operation for at least two weeks.~~

(b) In the case of establishments that have been closed for failure to comply with these Rules, an inspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Department.

(c) ~~(b)~~ In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the ~~sanitarian~~ Department shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 30 ~~days, for the purpose of establishing a new grade~~ days from the date of the request.

Statutory Authority G.S. 130A-248.

.1805 INSPECTION FORMS

The grading of lodging ~~places~~ establishments shall be done on an inspection form furnished by the Department to local health departments. The form shall include at least the following information:

(1) name and address of lodging places,
(2) name of ~~manager~~ owner, or leasee,
(3) score,
(4) ~~standards~~ Rules of construction and operation as listed in Rules .1808 to .1814 of this Section,
(5) signature of authorized ~~representative.~~ representative,
(6) the permit status code.

Statutory Authority G.S. 130A-248.

.1806 GRADING

The grading of lodging ~~places~~ establishments shall be based upon the ~~standards~~ Rules of construction and operation set out in Rules .1808 to .1814 of this Section.

Statutory Authority G.S. 130A-248.

.1807 APPROVED LODGING ESTABLISHMENTS

The sanitation grading of all lodging ~~places~~ establishments shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and no establishment receiving a score of less than 70 percent, or Grade C, shall operate.

Statutory Authority G.S. 130A-248.

.1808 LOBBY: HALLS: AND STAIRS

(a) The lobby, halls, ~~and stairs~~ stairs, ice and vending machine locations, and other common areas shall have ventilation and ~~sufficient~~ at least 10 foot-candles of light ~~for cleaning~~ at 30 inches above the floor.

(b) Floors, walls, ceilings, ~~and~~ windows and ventilation shall be kept clean and in good repair.

(c) Furniture, fixtures, draperies, and other accessories shall be ~~properly maintained and cleaned~~ clean and in good repair.

Statutory Authority G.S. 130A-248.

.1809 LAVATORIES AND BATHS

(a) Baths, lavatories, and toilets shall be provided for each room or unit in establishments constructed on or after December 1, 1988. Such fixtures shall be kept clean and in good repair.

(b) All lavatory and bathing facilities shall include hot and cold running water under ~~pressure, individual towels,~~ pressure with a mixing faucet, a towel for each guest, and soap. ~~Floors and walls shall be constructed of smooth, non-absorbent, washable materials.~~

(c) Floors, walls, and ceilings shall be ~~kept clean and in good repair~~ cleanable, durable, and shall be kept clean and in good repair.

(d) All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating, sanitary sewage system.

Statutory Authority G.S. 130A-248.

.1810 WATER SUPPLY

(a) Water supplies shall meet the requirements in 15A NCAC 18A .1700.

(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Health Services' rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. At least once a year, a sample of water shall be collected by the Department and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations. However, a water sample is not required for a lodging establishment using a community water supply regulated under 15A NCAC 18C.

(c) Cross-connections with sewage lines or unapproved water supplies or other potential sources of contamination are prohibited. ~~All plumbing fixtures for potable water shall be provided and installed as required by the North Carolina State Building Code. Copies of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North~~

~~Carolina 27611.~~

(d) Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided in sufficient quantities necessary for ~~to~~ food preparation areas, and ~~any~~ other areas in which water is required for cleaning.

(e) Hot water in guest rooms shall be provided at a temperature of 120°F or less.

Statutory Authority G.S. 130A-248.

.1811 DRINKING WATER FACILITIES

(a) Facilities for the dispensing of drinking water shall be of approved sanitary design. ~~If water cooling equipment is installed, it shall be of a type in which ice does not come in contact with the water.~~ If drinking fountains are provided, they shall be of approved angle-jet type. ~~Common dippers or common drinking glasses or cups shall not be used.~~

(b) ~~For room service, glasses and~~ Multi-use or single service, glasses, cups, pitchers ~~(or multi-use tubs), or single service cups and single service tubs,~~ or ice buckets may be used, provided all multi-use utensils are washed thoroughly, subjected to approved bactericidal treatment, and stored and handled in a sanitary manner before being given to succeeding guests. For the washing, bactericidal treatment, and storage of multi-use utensils, facilities meeting the requirements of the "Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 shall be provided in a separate room. These utensils shall not be washed in room lavatories. Single-service ~~cups, tubs, or similar~~ items shall be stored and handled in a sanitary manner. Clean glasses shall be individually wrapped or fitted with a single-service cap that covers the edge of the glass. If disposable or single service plastic liners are provided for ice buckets, the sanitization of buckets is not required.

(c) Ice used for room service shall be manufactured from ~~a safe~~ an approved water ~~supply,~~ supply and shall be stored and handled in a sanitary manner. ~~manner, and block ice shall be washed.~~ Where ice is made on the premises, the machines shall be located in a protected ~~place; long handled scoops~~ place. Scoops shall be provided so guests or employees can dispense ice in a sanitary manner. Machines, ~~manner; and machines,~~ equipment, utensils, and the room or area in which the machines are located shall be kept clean and in good repair. All ice machines for use by guests installed after January 1, 1996, shall dispense ice without exposing stored ice to guests.

(d) Ice storage bins shall not be used for any other purpose and shall be kept clean and in good repair.

(e) If cooking and multi-use eating and drinking utensils are provided for use by guests in cooking, food preparation, utensil washing areas occupied by quests, the lodging establishment shall wash, rinse and sanitize the cooking and multi-use eating and drinking utensils prior to use by succeeding guests.

Statutory Authority G.S. 130A-248.

.1812 GUESTROOMS

(a) ~~Bedrooms~~ Guestrooms shall have adequate lighting and ventilation, and 30 foot-candles of light at 30 inches above the floor. ~~either natural or artificial.~~ Lighting shall be adequate for reading and to enable thorough cleaning. Where natural ventilation only is provided, windows with screens shall equal at least one-eighth of the floor area and shall be capable of being opened. Windows shall be kept clean and in good repair. In the absence of windows, air conditioning and artificial lighting constitutes satisfactory compliance.

(b) ~~Approved window~~ Window coverings ~~shall be provided to insure privacy for guests, and~~ shall be kept clean and in good repair.

(c) Two sheets shall be provided for each bed. The lower sheet shall be ~~of sufficient length to fold~~ folded under both ends of the mattress. ~~mattress where contour sheets are not used.~~ The upper sheet shall be ~~of sufficient length to fold~~ folded under the mattress at the lower end and ~~to fold~~ folded over the cover for at least six inches at the top end. ~~All sheets shall be of sufficient width to tuck under the mattress and shall be clean for each new occupant. All bed linens and furnishings shall be kept clean and in good repair.~~ Bed linens, including sheets and pillow cases, shall be kept clean and in good repair.

(d) The floors, walls, and ceilings of bedrooms, closets, and storage areas shall be kept clean and in good repair. Furniture, shades, curtains, carpets and other accessories shall be kept clean and in good repair.

(e) All lodging establishments shall be kept free of roaches, flies and other pests. Guestrooms ~~Bedrooms~~ having outside openings shall be effectively screened unless air conditioned.

Statutory Authority G.S. 130A-248.

.1813 STORAGE

~~Storage rooms or cabinets shall be provided for all supplies, linens, and equipment. Clean linen shall be stored in cabinets, or on shelves in linen storage rooms. Cabinets, shelves, and storage rooms shall be kept neat, orderly and clean. Soiled linen shall be so handled and stored as not to come in contact with clean linen.~~

(a) Storage rooms or cabinets shall be provided for all supplies, linens, and equipment.

(b) Clean linen shall be stored in cabinets, or on shelves in linen storage rooms. Cabinets, shelves, and storage rooms shall be arranged to facilitate cleaning and kept clean.

(c) Soiled linen shall be so handled and stored as not to come in contact with clean linen.

(d) A separate storage area shall be provided for building and ground maintenance equipment and supplies.

(e) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items.

Statutory Authority G.S. 130A-248.

.1814 DISPOSAL OF GARBAGE AND TRASH: PREMISES

(a) All garbage and trash shall be collected and stored in covered containers in such a manner as not to create a nuisance. Garbage storage containers shall be kept clean. ~~Garbage shall be collected and stored in watertight garbage cans provided with tight-fitting lids. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises.~~

(b) There shall be no fly- or mosquito-breeding places, rodent harborages, or undrained areas on the premises. The premises shall be kept neat and clean. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises.

(c) Facilities shall be provided for the washing and storage of garbage and trash containers, mops, mop buckets, mop wringers, and any other equipment used in the cleaning of the lodging establishment. Cleaning facilities shall include combination faucet, hot and cold water, hose bibb with a backflow prevention device and curved impervious pad sloped to drain or other approved facilities or methods. Where dumpsters are used, a contract for off-site cleaning shall constitute compliance with this Paragraph.

Statutory Authority G.S. 130A-248.

.1818 PLAN REVIEW

~~Food preparation or food service activities shall meet the requirements of 15A NCAC 18A .2600, "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments".~~

(a) Plans, drawn to scale, and specifications, for new lodging establishments shall be submitted for review and approval to the local health department prior to initiating construction. Plans, drawn to scale, and specifications shall also be submitted prior to construction of additions or renovations to existing lodging establishments. Plans, drawn to scale, and specifications for prototype "franchised" or "chain" facilities shall also be submitted for review and approval to the Environmental Health Services Section, Division of Environmental Health.

(b) Construction shall comply with approved plans and specifications.

Statutory Authority G.S. 130A-248.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .2601 - .2602, .2618, .2624, .2632, .2635 and repeal rule cited as 15A NCAC 18A .2636.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 pm on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.*

Reason for Proposed Action: *The agency, several local health departments, and representatives of industry have indicated that there is a need for various changes in Restaurant Rules in order to eliminate confusion and differences in interpretation of the rules.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Susan Grayson, Food, Lodging and Institutional Sanitation Branch Head, PO Box 27687, Raleigh, NC 27611-7687. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Ms. Grayson at (919) 715-0926. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to made during the public hearing process.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

(1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation standards or equal shall be considered as approved. The National Sanitation Foundation Commercial Food Service Equipment Standards are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from NSF International, P.O. Box 13014, Ann Arbor, Michigan 48113-0140, at a cost of three hundred and twenty five dollars ($325.00). Food which complies with requirements of the North Carolina Department of

Agriculture or United States Department of Agriculture and the requirements of this Section shall be considered as approved.

(2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the guidelines of the N.C. Department of Human Resources, Division of Aging.

(3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.

(4) "Department of Environment, Health, and Natural Resources" or "Department" means the North Carolina Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.

(5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.

(6) "Eating and cooking utensils" means any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

(7) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.

(8) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(9) "Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.

(10) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.

(11) "Limited food service establishment" means a food service establishment which operates for a total of 60 days or less per year and more than 15 days per year.

(12) "Local Health Director" means the administrative head of a local health department or his authorized representative.

(13) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.

(14) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(15) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

(16) "Private club" means a private club as defined in G.S. 130A-247(2).

(17) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.

(18) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.

(19) "Restaurant" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.

(20) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.

(21) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

(22) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(23) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.

(24) "Temporary food ~~stand~~ establishment" means those food or drink stands which operate for a period of 15 days per year or less, in connection with a fair, carnival, circus, public exhibition, or

other similar gathering.

~~(25) "Temporary restaurant" means a restaurant, as defined in Item (19) of this Rule, that operates for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.~~

Statutory Authority G.S. 130A-248.

.2602 PERMITS

(a) No permit to operate shall be issued to a person until an ~~inspection~~ evaluation by the Department shows that the establishment complies with this Section.

(b) Upon transfer of ownership of an existing food service establishment, the Department shall complete an ~~inspection~~ evaluation. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent a threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the food service establishment shall not continue to operate.

(c) The Department may impose conditions on the issuance of a permit or transitional permit. Conditions may be specified for one or more of the following areas:

(1) The number of seats or persons served.
(2) The categories of food served.
(3) Time schedules in completing minor construction items.
(4) Modification or maintenance of water supplies.
(5) Use of facilities for more than one purpose.
(6) Continuation of contractual arrangements upon which basis the permit was issued.
(7) Submission and approval of plans for renovation.
(8) Any other conditions necessary for a food service operation to remain in compliance with this Section.

(d) If a permit or transitional permit has been suspended, the suspension shall be lifted after the Department has inspected the food service operation and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after the Department has inspected the food service operation and found it to comply with all applicable rules. The inspections shall be conducted within a reasonable length of time after the request is made by the operator.

Statutory Authority G.S. 130A-248.

.2618 CLEANING OF EQUIPMENT AND UTENSILS

(a) All equipment and fixtures shall be kept clean. All cloths used by chefs and other employees in the kitchen shall be clean. Single-service containers shall be used only once.

(b) All multi-use eating and drinking utensils shall be thoroughly washed, rinsed, and subjected to an approved bactericidal treatment after each usage. The supply of eating and drinking utensils shall be of sufficient quantity to allow washing, rinsing, sanitizing and air-drying before re-use. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking, or serving of food or drink shall be cleaned and rinsed immediately after the days' operations, after each use, or upon completion of each meal as indicated. Pizza pans and similar type pans (not used for table service) which are continually subjected to high temperatures do not require cleaning after each use or day's use but shall be kept clean and maintained in good repair.

(c) In addition to washing and rinsing multi-use utensils as indicated in Paragraph (b) of this Rule, preparation surfaces which come in contact with potentially hazardous foods and are not subjected to heat during routine cooking operations shall be sanitized. Examples of food contact surfaces which must be sanitized are utensils used in preparing cold salads and cold beverages, cutting boards, table tops, knives, saws, and slicers. For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, and for those establishments which do not have dishwashing equipment, a spray-on or wipe-on sanitizer may be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils.

(d) Hand dishwashing facilities shall consist of an approved three-compartment sink of sufficient size and depth to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of a sufficient size to accommodate the ~~drying~~ drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks.

(e) Where the Department determines that the volume of dishes, glasses and utensils to be washed cannot be processed in a single warewashing facility, separate dish, glass or utensil washing facilities shall be required. Separate vegetable washing facilities shall be provided in establishments which wash raw vegetables except where plan review shows that volume and preparation frequency do not require separate vegetable washing facilities or where vegetables are purchased prewashed and packaged. Establishments which scale or eviscerate fish or wash raw poultry shall provide separate sinks with preparation space for these processes except where plan review shows that volume and preparation frequency do not require separate

washing facilities.

(f) When dishwashing machines are used, the machines shall be approved and shall be fitted with drainboards of ample capacity on each side, and include a countersunk sink or other approved means for pre-cleaning, pre-flushing, or pre-soaking of the utensils in the dirty dish lane. Thermometers indicating the wash and rinse water temperatures shall be provided and kept in good repair.

(g) When dishwashing machines are used, the machines shall be approved on the basis of size, capacity, and type for the number of utensils to be washed. Under some conditions, as when volume is limited and time permits, glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for final rinse and bactericidal treatment. For this method, a motor-driven glass-washer and a single-vat sink may suffice.

(h) When only single-service eating and drinking utensils are used, at least an approved two-compartment sink shall be provided. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of sufficient size to accommodate the ~~drying~~ drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks.

(i) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of dishwashing machines, and other food service and cleaning needs. Hot water storage tanks shall provide a minimum of 130° F (54° C) hot water when water is not used for sanitizing; when hot water is used for sanitizing, a minimum storage temperature of 140° F (60° C) hot water is required.

(j) No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

Statutory Authority G.S. 130A-248.

.2624 TOILET FACILITIES

(a) Every restaurant shall be provided with toilet facilities ~~for each sex~~ conveniently located and readily accessible at all business hours. Unless specified elsewhere in these Rules, all restaurants shall have toilets which are convenient and accessible to employees and customers. Toilets for patrons shall be so located that the patrons do not pass through the kitchen to enter the toilet rooms. Intervening rooms or vestibules, if provided, shall be constructed and maintained in accordance with this Rule. Toilets shall be in the proximity of the restaurant and under control of the management. Floors and walls shall be constructed of non-absorbent, washable materials. Floors, walls, and ceilings shall be kept clean and in good repair. Toilet rooms shall be provided with self-closing doors, and kept free of flies and storage. Windows shall be screened if used for ventilation. Fixtures shall be kept clean and in good repair.

(b) Signs shall be posted to advise the public of the locations and identities of the toilet rooms. Durable, legible signs which read that employees must wash their hands before returning to work shall be posted or stenciled conspicuously in each employees' toilet room.

(c) Screens and doors are not required for toilet rooms at stadiums or facilities in which toilet rooms open into the interior of a building and the exterior doors of the building are self-closing.

(d) All toilet wastes and other sewage shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved sanitary sewage system.

Statutory Authority G.S. 130A-248.

.2632 STORAGE SPACES

(a) Storage spaces shall be kept clean and free from unnecessary articles and offensive or musty odors. The contents shall be neatly arranged to facilitate cleaning. All storage shall be at least ~~15 in. (38.1 cm.)~~ 12 in. (30.48cm.) above the floor when placed on stationary storage units or 6 in. (15.24 cm.) above the floor when placed on portable storage units or otherwise arranged so as to permit thorough cleaning.

(b) Dry beans, grits, flour, sugar, and similar food products shall be stored in approved, tightly covered containers, glass jars, or equal and labeled accordingly.

(c) Shelves in storage rooms shall be constructed approximately 1 in. (2.54 cm.) from the wall, unless tightly stripped to eliminate cracks or roaches.

(d) Bulky items shall be stored on slatted shelves or movable dollies.

(e) Foods shall not be stored under exposed sewer lines.

Statutory Authority G.S. 130A-248.

.2635 REQUIREMENTS FOR TEMPORARY FOOD ESTABLISHMENTS

The following requirements shall be satisfied in order for temporary food ~~stands~~ establishments to qualify for a permit under Rule .2602 of this Section:

(1) Temporary food ~~stands~~ establishments shall be located in clean surroundings and kept in a clean and sanitary condition. They shall be so constructed and arranged that food, utensils, and equipment will not be exposed to insects, dust, and other contamination. Protection against flies and other insects shall be provided by screening or by effective use of fans.

(2) Where food or griddles are exposed to the public or to dust or insects, they shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to

permit handling and serving of the food.

(3) All griddles, warmers, spatulas, refrigerators, and other utensils and equipment shall be cleaned routinely and maintained in a sanitary manner.

(4) Running water under pressure shall be provided. The water supply shall be approved and of a safe, sanitary quality. Provisions shall be made for heating water for the washing of utensils and equipment. At least a single vat sink, large enough in which to wash cooking utensils, pots, and pans, must be provided. At least one drainboard or counter top space must be provided.

(5) Facilities shall be provided for employees' handwashing. These may consist of a pan, soap, and single-use towels.

(6) Convenient and approved toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds are acceptable if reasonably convenient, adequate, and kept clean. Sewage shall be disposed of in an approved manner.

(7) Potentially hazardous foods shall be refrigerated in accordance with Rule .2609 of this Section. All food shall be stored, handled, and displayed in accordance with Rule .2610(a) through (d) of this Section. Food service equipment shall be stored in accordance with Rule .2620 of this Section.

(8) Garbage and refuse shall be collected and stored in standard water-tight garbage cans provided with tightfitting lids or other approved containers or methods. Garbage and refuse shall be removed at least daily and disposed of in a sanitary manner. Waste water shall be so disposed of as not to create a nuisance. Each operator shall keep his immediate premises clean.

(9) All food served shall be clean, wholesome, and free from adulteration. Potentially hazardous foods such as cream-filled pastries and pies, and salads such as potato, chicken, ham, crab, etc., shall not be served in a temporary food ~~stand~~ establishment. Hamburgers shall be obtained from an approved market or plant in patties separated by clean paper, or other wrapping material, and ready to cook. Wrapped sandwiches shall be obtained from an approved source. Poultry shall be prepared for cooking in an approved market or plant. Drinks served shall be limited to packaged, canned, or bottled drinks, packaged milk, coffee, or carbonated beverages from approved dispensing devices.

(10) Food prepared by local groups shall be prepared in an approved kitchen, and such groups shall maintain a record of the type and origin of such foods. These foods shall be prepared, transported, and stored in a sanitary manner protected from contamination and spoilage.

(11) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

Statutory Authority G.S. 130A-248.

.2636 REQUIREMENTS FOR TEMPORARY RESTAURANTS

~~Temporary restaurants shall comply with all requirements for restaurants, as provided in .2608 to .2633 of this Section, with the following exceptions:~~

~~(1) Floors. Properly graded dirt floors covered with sawdust or shavings kept sprinkled, or otherwise treated to control dust, are acceptable.~~

~~(2) Walls and ceilings. Temporary construction is acceptable, provided that flies are effectively excluded and dust is kept at a minimum. Walls may be of screening if the surroundings are kept dust-free by sprinkling or other dust treatment methods.~~

~~(3) Toilet facilities. Public toilet facilities provided on the grounds are acceptable if reasonably convenient and kept clean.~~

Statutory Authority G.S. 130A-248.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 20D .0233, .0234, .0236, .0241 - .0243, .0247 - .0252.*

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC.*

Reason for Proposed Action: *A majority of the proposed Rule changes [15A NCAC 20D .0233, .0243(2)(C), .0243(2)(D), .0249, .0250, .0251, .0252] are to comply with new federal regulations. The proposed change to Rule .0236 would modify the certification criteria for out-of-state laboratories to allow the Division the ability to certify out-of-state laboratories in states that do not have drinking water certification programs in force. Other proposed Rule changes [15A NCAC 20D .0234, .0243(c)(1)(A), .0247] are to modify the criteria to better define some specific quality control requirements in the laboratories. The remaining*

proposed Rule changes (15A NCAC 20D .0241, .0242, .0248) are to simply update adopted references in the Rule so that they are current with the Code of Federal Regulations (Safe Drinking Water Act) and the EPA certification criteria.

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.*

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 20 - LABORATORY SERVICES

SUBCHAPTER 20D - CERTIFICATION AND IMPROVEMENT

SECTION .0200 - LABORATORY CERTIFICATION

.0233 CERTIFICATION, CERTIFICATION RENEWAL AND FEES

(a) The Department of Environment, Health, and Natural Resources shall grant certification for the test categories requested upon finding that a laboratory meets the minimum requirements set forth in this Section.

(b) A laboratory may renew its certification every year by payment of the certification fee by December 1 of the preceding year. A laboratory which renews its certification shall continue to meet the minimum requirements of this Section in accordance with 15A NCAC 20D .0234.

(c) The certificate and information pertaining to certification shall remain the property of the Department of Environment, Health, and Natural Resources and shall be surrendered upon decertification pursuant to Rule .0234 of this Section. All certification information shall be available for public access pursuant to Chapter 132 of North Carolina General Statutes.

(d) The certification fee shall be twenty dollars ($20.00) per analyte. The minimum and maximum fee per analyte group shall be as set out in G.S. 130A-326(7). The analyte groups are as follows:

(1) inorganic chemistry;
(2) organic chemistry I (synthetic organic chemicals);
(3) organic chemistry II (volatile organic chemicals);
(4) total ~~and~~ coliforms, fecal coliforms, heterotrophic plate count; and
(5) radiochemistry.

The certification fee shall not be prorated nor refunded. Twenty percent shall be due at the time of the application.

Statutory Authority G.S. 130A-315; 130-326.

.0234 CRITERIA AND PROCEDURES: DECERT./DENIAL/DOWNGRADING

(a) The Department of Environment, Health, and Natural Resources or its delegate may decertify, downgrade or deny laboratory certification if the laboratory:

(1) Failed to train or supervise employees in laboratory methodologies required by 15A NCAC 18C .1500;
(2) Failed to report analytical results of performance evaluation samples or compliance samples or maintain records as required by this Section and the Rules Governing Public Water Supplies in 15A NCAC 18C .1500;
(3) Failed to maintain facilities and equipment in accordance with the minimum requirements of this Section;
(4) Failed to notify the certification evaluator within 30 days of major changes such as personnel, equipment, or laboratory location;
(5) Violated or aided and abetted in the violation of any provisions of the rules of this Section; or
(6) Failed to correctly analyze on-site evaluation performance samples during the initial on-site evaluation.

(b) A downgraded laboratory with provisional certification may continue to perform analyses. The provisional status shall continue for at least six months. At the end of the six months the laboratory certification shall be reinstated if the laboratory has made corrections and is in compliance with the minimum requirements for certification. If no corrections have been made the laboratory certification may be revoked.

(c) The Department of Environment, Health, and Natural Resources or its delegate may decertify or deny laboratory

certification when a laboratory or its employees have done any of the following:

(1) Knowingly made false statements on any documents associated with certification;

(2) Falsified results of analysis;

(3) Submitted performance evaluation samples used for certification determination to another laboratory for analysis;

(4) Failed to employ approved laboratory methodology in the performance of the analyses required by 15A NCAC 18C .1500;

(5) Failed to correctly analyze performance evaluation samples including United States EPA water study, double blind, blind, and on-site samples or report the results within the specified time in accordance with the requirements of 15A NCAC 20D .0243 and .0251;

(6) Failed to report analytical results of performance evaluation samples or compliance samples or maintain records as required by this Section and the Rules Governing Public Water Supplies in 15A NCAC 18C;

(7) Failed to satisfy the certification evaluator that the laboratory has corrected deviations identified during the on-site visit within 30 days; or

(8) Violated or aided and abetted in the violation of any provisions of the rules of this Section.

(d) The Department of Environment, Health, and Natural Resources or its delegate shall notify a laboratory of its intent to decertify, downgrade to provisional status or deny certification. The notice shall be in writing and include reasons for the decision and shall be delivered by certified mail.

(e) This Rule shall not preclude informal conferences concerning a decision to decertify, downgrade to provisional status or deny certification.

(f) If a laboratory is denied initial certification for failure to satisfy this Rule, the laboratory may request another evaluation which shall be scheduled between 15 days and 30 days after the initial on-site evaluation. If the laboratory is denied certification during the second on-site evaluation, the laboratory shall satisfy the initial certification criteria as stated in Rule .0232 of this Section before another evaluation is scheduled.

(g) The Department of Environment, Health, and Natural Resources or its delegate may decertify or deny laboratory certification if the laboratory has been decertified by another certifying agency for committing any of the items contained in Subparagraphs (c)(1)-(3) of this Rule.

Statutory Authority G.S. 130A-315.

.0236 CERTIFICATION OF OUT-OF-STATE LABS

(a) An out-of-state laboratory shall meet all the following conditions to obtain North Carolina certification to perform analyses for compliance with 15A NCAC 18C .1500:

(1) The laboratory shall be certified under a ~~similar~~ program administered by the state in which facility is located or ~~must be certified~~ by the United States Environmental Protection Agency (EPA). If a state has no program for certifying drinking water laboratories, an on-site evaluation may be performed and certification granted by the North Carolina Drinking Water Certification Branch for the analysis of drinking water in the state of North Carolina.

(2) The laboratory shall provide this office with its EPA performance evaluation data within 30 days of the receipt of those data;

(3) An initial on-site inspection shall be conducted by one or more laboratory certification evaluators at the requesting laboratory's expense. The Department shall not be required to conduct follow-up inspections more than once per year. Follow-up inspections shall be conducted at the requesting laboratory's expense.

(4) The laboratory shall pay fees as prescribed in Rule .0233 of this Section; and

(5) The laboratory shall notify the North Carolina Department of Environment, Health, and Natural Resources within 30 days of any changes in its certification status pursuant to the actions of another agency.

(b) The laboratory's failure to comply with any or all of the conditions in Paragraph (a) of this Rule will prevent the laboratory from obtaining certification in North Carolina or result in downgrading or decertification in North Carolina.

Statutory Authority G.S. 130A-315.

. 0241 CHEMISTRY METHODOLOGY

Minimum equipment requirements and methodology for individual parameters of chemical analyses shall be in accordance with methods adopted in ~~15A NCAC 18C .1508, 15A NCAC 18C .1515, 15A NCAC 18C .1522 and 15A NCAC 18C .1513.~~ 40 C.F.R. 141.23, 141.24, 141.30, 141.40(n)(11), and 143.4(b) which is hereby incorporated by reference including any subsequent amendments and editions. A list of methods may be obtained from the Division of Laboratory Services.

Statutory Authority G.S. 130A-315.

.0242 CHEMISTRY SAMPLE COLLECTION, HANDLING, AND PRESERVATION

(a) A written sampling protocol with specific sampling instructions shall be available to sample collectors and available for inspection by the certification officer.

(b) The following handling and preservation requirements of samples shall apply:

(1) Rejection of samples. The laboratory shall reject any samples taken for compliance purposes that do not meet the criteria in

Subparagraphs (b)(2) - (b)(5) of this Rule, and shall notify the system or individual requesting the analyses.

(2) Sample containers and preservation. The type of sample container and the required preservative for each inorganic ~~and organic chemical~~ contaminant shall meet the criteria ~~of Tables IV-4 and IV-5 in the EPA "Manual for the Certification of Laboratories Analyzing Drinking Water"~~ adopted in 40 C.F.R. 141.23(k)(5), and 141.86(b)(2) which is hereby incorporated by reference including any subsequent amendments and editions. The type of sample container and required preservative for organic contaminants shall meet the criteria in the approved methods adopted in 40 C.F.R. 141.24, 141.30 and 141.40(n)(11) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. ~~Non-profit organizations or government agencies may obtain a copy by contacting the EPA Drinking Water Hotline at 800-426-4791. Other organizations may obtain a copy from the National Technical Information Service at 800-336-4700 for thirty-five dollars ($35.00).~~ Copies of 40 C.F.R. 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

(3) Maximum Holding Times. Samples shall be analyzed within the maximum holding times listed in ~~Tables IV-4 and IV-5 in the EPA "Manual for the Certification of Laboratories Analyzing Drinking Water",~~ 40 C.F.R. 123(k)(5) and 141.86(b)(2) and those listed in the methods adopted in 40 C.F.R. 141.24, 141.30 and 141.40(n) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. ~~Nonprofit organizations or government agencies may obtain a copy by contacting the EPA Drinking Water Hotline at 800-426-4791. Other organizations may obtain a copy from the National Technical Information Service at 800-336-4700 for thirty-five dollars ($35.00).~~ Copies of 40 C.F.R. 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

(4) Sample collection and transport. The laboratory shall accept only those samples which have been collected, identified, and transferred to the laboratory in accordance with the rules of this Section and 15A NCAC 18C .1500.

(5) Sample report form. The sample report form shall contain the location; date; and time of collection; collector's name; preservative added; and any other special remarks concerning the sample. Sample report forms shall be approved by the North Carolina Public Water Supply Section. Indelible ink shall be used to complete the form.

Statutory Authority G.S. 130A-315.

.0243 CHEMISTRY QUALITY ASSURANCE

(a) The following general requirements for chemistry quality assurance (QA) shall be met:

(1) All quality control information shall be available for inspection by the certification officer;

(2) A manual of analytical methods and the laboratory's QA plan shall be available to the analysts;

(3) Class S weights or higher quality weights shall be available to make periodic checks on the accuracy of the balances. Checks shall be within range of the manufacturer's guidelines. A record of these checks shall be available for inspection. The specific checks and their frequency are to be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least once a month.

(4) Color standards or their equivalent, such as built-in internal standards, shall be available to verify wavelength settings on spectrophotometers. These checks shall be within the manufacturer's tolerance limits. A record of the checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least every six months.

(b) The laboratory shall analyze performance samples as follows:

(1) United States Environmental Protection Agency performance samples shall be analyzed semi-annually. Results shall be within control limits established by EPA for each analyte for which the laboratory is or wishes to be certified.

(2) Double blind and blind samples shall be analyzed when submitted to a certified laboratory and results shall be within established control limits; these data shall be of equal weight to the EPA performance sample data and on site quality control sample data in determining the laboratory's certification status.

(3) On-site quality control samples shall be analyzed

when presented to the laboratory by the certification evaluator and results shall be within established control limits. These data shall be of equal weight to the EPA performance evaluation sample data and the double blind sample data in determining the laboratory's certification status.

(4) A laboratory shall have correctly analyzed two out of the last three performance samples for each analyte for which it is certified. In the event that a laboratory is decertified for failing to correctly analyze two out of the last three performance samples, the laboratory shall correctly analyze two consecutive performance samples to have their certification reinstated. The performance samples shall be analyzed no less than 30 days apart. A laboratory with less than three performance samples shall have successfully analyzed a minimum of two performance samples before their certification status may be determined.

(5) Unacceptable performance on any of the samples in Paragraph (b) of this Rule shall be corrected and explained in writing within 30 days and submitted to the certification evaluator.

(c) The minimum daily quality control (QC) for chemistry shall be as follows:

(1) Inorganic Contaminants:

(A) At the beginning of each day that samples are to be analyzed, a standard curve composed of at least a reagent blank and three standards covering the sample concentration range shall be prepared. A standard curve is not required on each day of analysis for samples analyzed for Nitrate by manual cadmium reduction or for Cyanide. The standard curve shall be verified each day by analyzing a calibration standard and a reagent blank. The calibration standard must be within ± 10 percent of its true value in order to use the standard curve. If it is not within 10 percent of the true value, a new standard curve shall be prepared.

(B) The laboratory shall analyze a QC sample (EPA QC sample or equivalent) at the beginning of the sample run, at the end of the sample run, and every 20 samples, with recoveries not to exceed ± 10 percent of the true concentration. The source of this QC sample shall be different from the source used for the calibration standards in Part (c)(1)(A) of this Rule.

(C) The laboratory shall run an additional standard or QC check at the laboratory's lowest detectable limit for the particular analyte. The laboratory shall not report a value lower than the lowest standard or QC check analyzed.

(D) The laboratory shall add a known spike to a minimum of 10 percent of the routine samples (except when the method specifies a different percentage, i.e. furnace methods) to determine if the entire analytical system is in control. The spike concentration shall not be substantially less than the background concentration of the sample selected for spiking. The spike recoveries shall not exceed ± 10 percent of the true value.

(E) All compliance samples analyzed by graphite furnace shall be spiked to determine absence of matrix interferences with recoveries ± 10 percent of the true value of the spike concentration.

(F) The laboratory shall run a duplicate sample every 10 samples with duplicate values within ± 10 percent of each other.

(G) Precision and accuracy data may be computed from the analyses of check samples of known value used routinely in each analytical procedure. This data shall be available for inspection by the laboratory evaluator.

(2) Organic Contaminants:

(A) Quality control specified in the approved methods referenced in Rule .0241 of this Section shall be followed.

(B) Analysis for regulated volatile organic chemicals under 15A NCAC 18C .1515 shall only be conducted by laboratories that have received conditional approval by EPA or the Department according to 40 C.F.R. 141.24(g)(10) and (11) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Copies of 40 C.F.R. 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

(C) Analysis for unregulated volatile organic chemicals under 15A NCAC 18C .1516 shall only be conducted by laboratories approved under Part (c)(2)(B) of this Rule. In addition to the requirements of Part (c)(2)(B) of this Rule, each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB of 0.00001 mg/l and DBCP of 0.0002 mg/l, according to the procedures in Appendix B of 40 C.F.R. Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina.

(D) The laboratory shall achieve the method detection limits as listed in 40 CFR 141.24(f)(18) according to the procedures in Appendix B of 40 CFR Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina.

Statutory Authority G.S. 130A-315.

.0247 MICROBIOLOGY EQUIPMENT/ SUPPLIES/ASSOCIATED QUALITY CONTROL

(a) A laboratory seeking certification for microbiological analyses of water shall have available, or have access to, the items required for the total coliform and fecal coliform procedures as listed in the EPA "Manual for the Certification of Laboratories Analyzing Drinking Water", Chapter 5, Section 3, Laboratory Equipment and Supplies which is hereby incorporated by reference including any subsequent amendments and editions, except that Sections 3.2.2, 3.5.4 and ~~3.11.5~~ 3.11.6 are not incorporated by reference. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Nonprofit organizations or government agencies may obtain a copy by contacting the EPA Drinking Water Hotline at 800-426-4791. Other organizations may obtain a copy from the National Technical Information Service at 800-336-4700 for thirty five dollars ($35.00).

(b) In addition to the items and procedures incorporated by reference in Paragraph (a) of this Rule the laboratory shall have available the items and follow the procedures listed in this Paragraph:

(1) Balance. Calibrate the balance monthly using class S or S-1 reference weights. Check the balance with a minimum of three traceable weights which bracket the laboratory weighing needs.

(2) Autoclave. The autoclave shall be checked at least weekly with a maximum registering thermometer. Heat sensitive tape or spore strips or ampules may be used during each autoclave cycle and results recorded.

(3) Fecal Coliform Waterbath:

(A) A temperature of 44.5°C ± 0.2°C shall be maintained.

(B) A thermometer graduated in 0.1°C increments shall be used to monitor temperature.

(C) The water level shall be sufficient to reach the upper level of media in tubes.

(D) On days used, record temperature at least twice per day with readings separated by at least four hours.

Statutory Authority G.S. 130A-315.

.0248 MICROBIOLOGY GENERAL LABORATORY PRACTICES

(a) The general laboratory practices for microbiological analyses shall be in accordance with those listed in the EPA "Manual for the Certification of Laboratories Analyzing Drinking Water", Chapter 5, Section 4, General Laboratory Practices, which is hereby incorporated by reference including any subsequent amendments and editions, except that Sections ~~4.7.1 through 4.9~~ 4.6.2-4.6.11 are not incorporated by reference. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Nonprofit organizations or government agencies may obtain a copy by contacting the EPA Drinking Water Hotline at 800-426-4791. Other organizations may obtain a copy from the National Technical Information Service at 800-336-4700 for $35.00.

(b) In addition, the following laboratory practices shall be followed:

~~(1) Media - General Requirements: Check each lot of medium with positive and negative culture control.~~

(1) ~~(2)~~Membrane Filter Media:

(A) Use m-Endo broth or agar or LES Endo broth or agar in the single step or enrichment techniques. Ensure that ethanol used in rehydration procedure is not denatured. Prepare medium in a sterile flask and use a boiling water bath or, if constantly attended, a hot plate with a stir bar to bring medium to the boiling point. Do not boil medium. Final pH shall be 7.2 ± 0.2.

(2) ~~(3)~~Multiple Tube Fermentation (MTF) Media:

(A) Use double strength lauryl sulfate broth or lactose broth in the presumptive test and single strength brilliant green lactose bile (BGLB) broth in the confirmed test. Autoclave media at 121°C for 12 minutes. Final pH shall be 6.8 ± 0.2 or 7.2 ± 0.2 for BGLB broth.

(B) If MTF media are refrigerated after sterilization, incubate overnight at 35°C ± 0.5°C before use. Discard tubes showing growth or bubbles. Use MTF media prepared in tubes with loose fitting closures within one week. Store broth media in screw cap tubes or bottles no longer than three months, provided media are stored in the dark. Discard media if evaporation exceeds 10 percent of original volume.

(C) LES Endo agar shall be used for the completed test. Refrigerate medium and use within two

weeks.

(3) ~~(4)~~Clark's Total Coliform Medium:
- (A) Autoclave for 12 minutes at 121°C. Allow space between bottles.
- (B) Final pH shall be 6.8 ± 0.2.
- (C) Store prepared medium in screw capped culture bottle no longer than three months; discard if evaporation exceeds 10 percent of original volume.

(4) ~~(5)~~EC Medium (for fecal coliforms):
- (A) Autoclave for 12 minutes at 121°C.
- (B) Examine tubes after sterilization to insure that inverted inner tubes are free of air bubbles and that the vials are at least partially covered with medium.
- (C) Incubate refrigerated sterilized medium overnight at 35°C ± 0.5°C; discard tubes that show growth or bubbles.
- (D) Store prepared medium in screw cap tubes.
- (E) Final pH shall be 6.9 ± 0.2.

(5) ~~(6)~~EC + MUG Medium (for detection of fecal coliforms-*E.* ~~*coli*~~ *coli*):
- (A) Autoclave medium at 121°C (gas tubes shall not be ~~used)~~ used).
- (B) Final pH shall be 6.9 ± ~~0.2~~ 0.2.
- (C) Store prepared medium in screw cap tubes no longer than three months.

(6) ~~(7)~~MMO-MUG Test Medium (for Total Coliform and *E. coli*):
- (A) The laboratory shall not prepare this medium from basic ingredients.
- (B) Each lot purchased shall be tested for performance by inoculation with three control bacteria: *Escherichia coli*, a total coliform other than *E. coli* (e.g., *Klebsiella pneumoniae*) and a non-coliform (e.g. *Pseudomonas aeruginosa*).
  These control organisms can be stock cultures or commercially available discs impregnated with the organism. Incubate these controls at 35°C ± 0.5°C for 24 hours, and read and record result.
- (C) Do not autoclave.

(7) ~~(8)~~Fecal Coliform Membrane Filter Medium (for enumeration of fecal coliform in source water).
- (A) Rehydrate medium in reagent water containing 10 ml of 1 percent rosolic acid in 2N NaOH. Bring it to the boiling point; do not autoclave.
- (B) Autoclave for 12 minutes at 121°C.
- (C) Final pH shall be 7.4 ± 0.2.
- (D) Refrigerate unused prepared medium; discard after 96 hours.

(8) ~~(9)~~Heterotrophic Plate Count (HPC) Medium:
- (A) Autoclave HPC agar at 121°C for 15 minutes.
- (B) Final pH shall be 7.0 ± 0.2.
- (C) Temper melted agar at 44°-46°C before pouring.
- (D) Hold melted agar no longer than four hours. Do not melt sterile agar medium more than once.

Statutory Authority G.S. 130A-315.

.0249 MICROBIOLOGY METHODOLOGY

(a) Minimum equipment requirements and methodology for microbiological analyses shall be in accordance with the methods adopted in 40 CFR 141.21(f) which is hereby incorporated by reference including any subsequent amendments and editions, except that Nutrient Agar plus MUG in 40 CFR 141.21(f)(6)(11) is not incorporated by reference. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Copies of 40 CFR 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

(b) For total coliform analysis the laboratory shall maintain certification for one or more of the approved methods as specified in this Paragraph:
- (1) The Membrane Filter Procedure (MF) may be used for drinking water when the sample is free from interference (e.g. turbidity and particulates). A laboratory must be approved for a second analytical procedure when MF is used.
- (2) The Multiple Tube Fermentation (MTF) procedure may be used for analyzing drinking water that contains particulates or other interfering substances and may be used as the back up or the sole approved method.
- (3) The ~~MMO-MUG(Colilert) procedure~~ ONPG-MUG Test and the Colisure Test may be used for analyzing drinking water that contains particulates. ~~A laboratory must be approved for a second analytical procedure when MMO-MUG is used.~~ These methods may be used as the back up or the sole approved method.

(c) A laboratory shall maintain certification for one of the approved methods for fecal coliform analysis.

(d) For all procedures in Paragraph (a) of this Rule incubate inoculated culture within 30 minutes of inoculation.

Statutory Authority G.S. 130A-315.

.0250 MICROBIOLOGY SAMPLE COLLECTION, HANDLING AND PRESERVATION

(a) For sample collecting, handling, and preservation, there shall be strict adherence to correct sampling procedures, complete identification of the sample, and prompt transfer of the sample to the laboratory as described in "Standard Methods for the Examination of Water and Wastewater", American Water Works Association, Part

9060, which is incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Copies may be obtained from the American Water Works Association, Customer Service, 6666 West Quincy Avenue, Denver, Colorado 80235 at the cost of one hundred twenty dollars ($120.00).

(b) Minimum sample frequency and sample location shall be that specified in 15A NCAC 18C .1534.

(c) The collector shall be trained in sampling procedures or written instructions shall be provided by the laboratory.

(d) The water shall be sampled after maintaining a steady flow for two or three minutes to clear service line. The tap shall be free of aerator, strainer, hose attachment, or water purification devices.

(e) The sample volume shall be a minimum of 100 ml. The sample bottle must be filled only to the shoulder to provide space for mixing.

(f) The sample report form shall be completed immediately after collection with location, date and time of collection, chlorine residual, collector's name, and remarks. The report shall be on a form approved by the North Carolina Public Water Supply Section.

(g) Date and time of sample arrival shall be added to the sample report form when the sample is received in the laboratory.

(h) Samples shall be received and analyzed within ~~48~~ 30 hours of time of collection. Samples that are not analyzed within ~~48~~ 30 hours must be rejected and a new sample must be collected.

Statutory Authority G.S. 130A-315.

.0251 MICROBIOLOGY QUALITY ASSURANCE

Requirements for quality assurance are as follows:

(1) A written quality assurance (QA) plan shall be available for review.

(2) Records on analytical quality control tests on media and equipment shall be prepared and retained for ~~three years~~ five years.

(3) A performance level of 75 percent shall be maintained for each method for which a laboratory is, or wishes to be certified. This 75 percent average shall be calculated from the 10 most recent performance sample data points from water performance studies, double blind, blind and on-site samples.

(4) For other quality control requirements refer to Rules .0247 and .0248 of this Section.

Statutory Authority G.S. 130A-315.

.0252 MICROBIOLOGY DATA

(a) Where the laboratory has the responsibility for microbiological sample collections, the sample collector shall complete a sample report form immediately after each sample is taken. The information on the form includes sample identification number, sample collector's name, time and date of collection, arrival time and date in the laboratory and other information as required.

(b) Results of microbiological analyses shall be calculated and entered on the sample report form to be forwarded to the Public Water Supply Section of the Division of Environmental Health. A careful check shall be made to verify that each result was entered correctly from the bench sheet and initialed by the analyst.

(c) A copy of the microbiological sample report form shall be retained by the laboratory for ~~three years~~ five years. If results are entered into a computer storage system, a printout of the data shall be returned to the laboratory for verification with bench sheets.

Statutory Authority G.S. 130A-315.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to repeal rules cited as 15A NCAC 21F .0801 - .0802 and .0804.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, Raleigh, NC.*

Reason for Proposed Action: *North Carolina Children's Special Health Services will eliminate a special provision which allows adopted children with special needs to be counted as a family of one for purposes of determining financial eligibility for program services in order to bring the rule into compliance with 15A NCAC 24A .0200.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.*

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .0800 - ADOPTION

.0801 GENERAL PROVISION

~~(a) If the requirements of this Section are met, a child who has been legally adopted and has no natural parent with legal responsibility for the child, shall, after the final order of adoption, be considered a family of one under 15A NCAC 24A .0204(c) for purposes of determining financial eligibility for program support.~~

~~(b) Authorization and payment for services shall be made pursuant to Section .0500 of this Subchapter and 15A NCAC 24A .0302 and .0303.~~

~~(c) After the adoption is completed, the agency handling the adoption shall inform the program of the following:~~

~~(1) the child's new name and address; and~~

~~(2) the adoptive parents' name and address.~~

~~If the child was placed independently, the adoptive parents shall provide this information to the program.~~

Statutory Authority G.S. 130A-124.

.0802 REQUIREMENTS FOR THE ADOPTIVE CHILD

~~To be eligible for program support, the child must meet the following requirements:~~

~~(1) The child must have a program supported medical condition as provided in 15A NCAC 21F .0303 which is documented by a physician rostered by the program to be existing prior to the final order of adoption; and~~

~~(2) The child must meet the residency requirements of 15A NCAC 24A .0201(b)(1).~~

Statutory Authority G.S. 130A-124.

.0804 APPLICATION FOR COVERAGE AFTER ADOPTION

~~(a) Application for post-adoption coverage shall be made on a form provided by the Department by the agency having legal responsibility, in the case of a state or private agency placement, or by the adoptive parents, in the case of an independent placement. The application must be received by Children's Special Health Services prior to the final order of adoption.~~

~~(b) Applications for state agency placed children shall be submitted to the North Carolina Adoption Resource Exchange, Division of Social Services, Department of Human Resources, for forwarding to Children's Special Health Services. Applications from private adoption agencies and for children adopted independently shall be submitted directly to the medical director of Children's Special Health Services.~~

Statutory Authority G.S. 130A-124.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 21F .1101 - .1103 and .1105.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC.*

Reason for Proposed Action: *Changes are proposed to the rules for the North Carolina Hemophilia Assistance Plan to enable coverage of patients who cannot use home therapy due to the nature of their bleeding disorder and venous status, to update the names of two medical centers, and to broaden the scope of covered services. Currently the Hemophilia Assistance Program restricts coverage to patients on home therapy and limits the type of care available.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments*

or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .1100 - NORTH CAROLINA HEMOPHILIA ASSISTANCE PLAN

.1101 GENERAL

The North Carolina Hemophilia Assistance Plan (NCHAP) is administered by Children's Special Health Services with funds appropriated by the North Carolina General Assembly to assist individuals ~~who require continuing treatment with blood derivatives or manufactured pharmaceutical products to avoid crippling or other effects associated with hemophilia~~ with hemophilia and congenital bleeding disorders.

Statutory Authority G.S. 130A-124.

.1102 ALLOCATION OF FUNDS

(a) NCHAP funds shall be allocated to the following institutions based upon number of eligible patients ~~in the home therapy programs of each institution~~ that were seen at the institution during the previous calendar year:

(1) ~~North Carolina Memorial Hospital;~~ University of North Carolina Hospitals;
(2) North Carolina Baptist Hospital;
(3) Duke University Medical Center;
(4) Eastern Carolina University Medical Center; and
(5) ~~Charlotte Memorial Hospital.~~ Carolinas Medical Center.

(b) The institutions listed in Paragraph (a) of this Rule shall use NCHAP funds to purchase services for individuals in accordance with the rules of this Section.

Statutory Authority G.S. 130A-124.

.1103 ELIGIBILITY

To be eligible for assistance under NCHAP, an individual must meet the following requirements:

(1) The individual must be a resident of North Carolina. For the purposes of this Rule, in order to be a resident of North Carolina, a person must not only live in the State but also have the intention of making his permanent home in this State to which, whenever absent, he intends to return;
(2) The individual must be diagnosed as having hemophilia ~~on a congenital basis;~~ or a congenital bleeding disorder;
(3) The individual must ~~be registered as a home therapy patient of~~ seek assistance in funding care from one of the institutions receiving NCHAP ~~funds~~ funds. ~~except that this requirement shall not apply when services are provided under Subparagraph (a)(2) of Rule .1105 of this Subchapter.~~

Statutory Authority G.S. 130A-124.

.1105 SERVICES

(a) The following services shall be provided to patients eligible for assistance under NCHAP:

(1) provision of ~~Factor VIII and Factor IX~~ blood ~~derivatives~~ replacement products, and
(2) provision of ~~dental care, diagnostic studies, drugs, physical therapy, psychiatric or psychosocial care, prosthetics or orthotics~~ other services related to hemophilia and its sequelae, and cost of transportation in obtaining this care.

(b) The individual per patient allocation for services may not exceed the sum of three thousand seven hundred fifty dollars ($3,750) per state fiscal year.

Statutory Authority G.S. 130A-124.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 24A .0102, .0202 - .0204 and .0301.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC.*

Reason for Proposed Action:
15A NCAC 24A .0102 *- This amendment is proposed in order to delete the Tuberculosis Program from the list of payment programs and to add the HIV Medications Program and the Adult Cystic Fibrosis Program to the list of payment*

programs.

15A NCAC 24A .0202 *- During FY95, the demand for funds in the Purchase of Care component of Children's Special Health Services (CSHS) exceeded the budget. CSHS has chosen to address this problem by changing financial eligibility through the use of Medicaid financial eligibility standards. This will create a uniform public policy with regard to eligibility determination while allowing CSHS to expand coverage of services not now provided by other agencies. Children who were offered a special CSHS post adoption coverage provision and adult patients with Cystic Fibrosis would be eligible to remain on CSHS without Medicaid coverage if they continue to qualify financially according to the federal poverty level.*

15A NCAC 24A .0203 *- This amendment will improve consistency by assuring that SSI income is counted toward gross income, as are all other sources of income.*

15A NCAC 24A .0204 *- This amendment is to clarify that it only pertains to adopted children who were approved for Children's Special Health Services (CSHS) post-adoption coverage prior to January 1, 1996. Effective with that date, the special post-adoption coverage will be eliminated, except for those already approved, by the deletion of 15A NCAC 21F .0800.*

15A NCAC 24A .0301 *- This Rule is proposed for amendment in order to clarify that documentation of income is not required for the Children's Special Health Services program since financial eligibility will be based on Medicaid eligibility pursuant to the proposed change to 15A NCAC 24A .0202.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.*

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *Rules 15A NCAC 24A .0202 - .0203 affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

Fiscal Note: *Rules 15A NCAC 24A .0102, .0204 and .0301 do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0100 - GENERAL PROVISIONS

.0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

(1) "Benefits" means the purchase of medical or dental care on a fee-for-service basis. "Benefits" also means the purchase of medical or dental appliances.

(2) "Department" means the Department of Environment, Health, and Natural Resources, or its contractor.

(3) "Inpatient services" means medical or dental care administered to a person who has been admitted to a hospital.

(4) "Outpatient services" means medical or dental care administered without admission to a hospital.

(5) "Payment programs" refers to Department program activities involving the purchase of medical or dental care on a fee-for-service basis or the purchase of medical or dental appliances, either through direct payment or through contracts with local health departments, other agencies, or private institutions. These activities are administered in the following:

(a) Children's Special Health Services,

(b) Cancer Program,

(c) Kidney Program,

(d) Maternal and Child Health Program,

(e) Migrant Health Program,

(f) School Health Fund,

(g) Sickle Cell Program, ~~and~~

(h) ~~Tuberculosis Program.~~ HIV Medications Program, and

(i) Adult Cystic Fibrosis Program.

(6) "Provider" means a person or entity who administers medical or dental care or furnishes medical or dental appliances under any of the payment programs.

(7) "Authorization" means agreement by a payment

program to pay for a medical or dental service or appliance provided all requirements in 15A NCAC 24A are met.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the income scales, except as provided in ~~Paragraph~~ Paragraphs (f) and (g) of this Rule.

(b) A person shall be financially eligible for inpatient services under the Sickle Cell Program ~~Program, and for inpatient services under Children's Special Health Services if the person is age 8-20~~ if the net family income is at or below the following scale: Family Size 1: $4,200; Family Size 2: $5,300; Family Size 3: $6,400; Family Size 4: $7,500; Family Size 5 and over: add $500 per family member.

(c) A person shall be financially eligible for outpatient services under the Sickle Cell Program ~~Program, for outpatient services under Children's Special Health Services, and for inpatient services under Children's Special Health Services if the person is age 0-7,~~ if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

(d) A person shall be financially eligible for the HIV Medications Program if the net family income is at or below 110 percent of the federal poverty level in effect on July 1 of each fiscal year.

(e) A person shall be financially eligible for the Kidney Program if the net family income is at or below the following scale: Family Size 1: $6,400; Family Size 2: $8,000; Family Size 3: $9,600; Family Size 4: $11,000; Family Size 5: $12,000; Family Size 6 and over: add $800 per family member.

(f) A person shall be financially eligible for the Cancer Program if gross family income is at or below 200% of the federal poverty level in effect on July 1 of each year.

(g) A child shall be financially eligible for Children's Special Health Services if the child is approved for Medicaid when applying or reapplying for program coverage, except for children eligible under Paragraph (h) of this Rule.

(h) A child approved for Children's Special Health Services post adoption coverage pursuant to 15A NCAC 21F .0800 prior to January 1, 1996, shall be eligible for services under Children's Special Health Services if the child's net income is at or below the federal poverty level in effect on July 1 of each year.

(i) A person shall be financially eligible for services under the Adult Cystic Fibrosis Program if the net family income is at or below the federal poverty level in effect on July 1 of each year.

(j) ~~(g)~~The financial eligibility requirements of this Subchapter shall not apply to:

(1) Migrant Health Program;

~~(2) Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met;~~

(2) ~~(3)~~School Health ~~Program~~ Fund financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;

(3) ~~(4)~~Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300;

(4) ~~(5)~~Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

(k) ~~(h)~~Except as provided in ~~Paragraph~~ Paragraphs ~~(i)~~ (l) and (m) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

(l) ~~(i)~~For purposes of the Kidney Program and HIV Medications Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

(m) Children eligible for Children's Special Health Services Program benefits under Paragraph (g) of this Rule are financially eligible for a service if they were Medicaid eligible on the date the requested service was initiated.

(n) ~~(j)~~If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request may be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

Statutory Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

.0203 ANNUAL NET FAMILY INCOME

(a) Annual net family income shall be computed by subtracting the deductions allowed in Paragraph (d) of this Rule, from the gross family income as computed in Paragraph (c) of this Rule.

(b) The time period to be used as the basis for computing annual net family income is the 12-month period immediately preceding the date a patient or his representative makes application for eligibility to a particular payment program. However, if any of the family members were unemployed for at least 30 consecutive days during this 12-month period or are currently unemployed at the time the application is completed, that person's portion of the annual net family income shall be computed on the basis of income and deductions for the six month period immediately preceding the date of application plus a projection of income and deductions (excluding medical expenses) for the six month period immediately succeeding the date of application based upon the current employment or benefit situation. Medical expenses from the 12-month period immediately preceding the date of application may be deducted from income.

(c) Gross Family Income:

(1) Gross family income shall mean the combined gross cash income received by the patient's family from the following sources:

(A) Salaries and wages;

(B) Earnings from self-employment;

(C) Investment income, stocks, bonds, savings account interest, rentals, and all other investment income;

(D) Periodic trust fund payments;

(E) Public assistance money;

(F) Unemployment compensation;

(G) Alimony and child support payments received;

(H) Military allotments;

(I) Social Security benefits;

(J) Veteran's Administration benefits;

(K) Retirement and pension payments;

(L) Worker's compensation;

(M) Educational stipends in excess of the cost of tuition and books;

(N) Allowances paid for basic living expenses such as housing and utilities; ~~and~~

(O) Supplemental security income benefits; and

(P) ~~(O)~~All other sources of cash income except those specifically excluded.

(2) Gross family income does not include:

(A) Irregular, incidental income that a child may earn from babysitting, lawn mowing, or other similar tasks;

~~(B) Supplemental security income benefits;~~

(B) ~~(C)~~Proceeds from the sale of an asset;

(C) ~~(D)~~Withdrawals from a bank account;

(D) ~~(E)~~Gifts;

(E) ~~(F)~~Inheritances;

(F) ~~(G)~~Life insurance proceeds or other one time insurance settlements.

(d) Any of the following expenses which are paid or incurred by a member of the patient's family shall be allowed as deductions in determining annual net family income:

(1) state, federal, and social security taxes owed on annual income (i.e. taxes withheld minus taxes refunded) and any deductions from pay required as a condition of employment such as mandatory retirement contributions;

(2) work related expenses incurred by the individual which are required by the employer as a condition of employment, but excluding the purchase or lease of an automobile, transportation to and from work, personal clothing and cleaning costs, food expenses, and all other items not required to perform the duties of employment;

(3) medical and dental expenses not covered by a third party payor, including the reasonable costs of transportation required to obtain the medical and dental services;

(4) health insurance premiums;

(5) child care expenses for any child 14 years of age and under and any handicapped child 15 years of age and over if both parents of a two parent family or a single parent work or are disabled or are out of the home attending school;

(6) expenses for the care of any family member who is physically or mentally unable to take care of himself or herself while other family members are out of the home working or attending school;

(7) child support and alimony payments paid to support someone outside of the family household; and

(8) educational expenses incurred for the purpose of managing the disability of any member of the patient's family.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

.0204 DETERMINATION OF FAMILY SIZE

(a) For the purpose of determining eligibility for benefits provided by any of the payment programs, a patient's family shall be defined as the patient and all individuals living in the same household with the patient who are:

(1) parents, not including step-parents, of the patient, if the patient is unmarried and less than 18 years of age;

(2) siblings or half-siblings of the patient, but not step-siblings, if the siblings are unmarried and less than 18 years of age;

(3) siblings or half-siblings of the patient, but not step-siblings, if the siblings are 18 years of age or over and have no income;

(4) the spouse of the patient; and

(5) individuals related to the patient by blood,

marriage, or adoption, if the individual has no income, and if no parent(s) or spouse of the individual lives in the same household and has income;

(b) Individuals who are students and are temporarily living away from their permanent home while attending school are for the purposes of the Rule considered to be living in the household of the permanent home.

(c) An adopted child who has received approval for Children's Special Health Services support pursuant to 15A NCAC 21F .0800 before January 1, 1996, shall be considered a family of one for purposes of this Rule.

(d) Except as provided in Paragraph (c) of this Rule, an adopted child shall be considered the same as a biological child and an adoptive parent shall be considered the same as a biological parent.

(e) For the purpose of this Rule, a half-sibling is a child who has one biological parent in common with the patient. A step-sibling is the child of a step-parent who has no biological parent in common with the patient.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0300 - ELIGIBILITY PROCEDURES

.0301 INCOME DOCUMENTATION

(a) Documentation of earned income of the patient's family is required before services can be authorized in the following circumstances:

(1) Whenever the applicant is requesting payment program benefits for inpatient services, even when outpatient services have been previously authorized.

(2) Whenever medical expense deductions from income exceed three thousand dollars ($3,000).

(3) Whenever eligibility personnel have reason to believe information given may be inaccurate.

(4) Whenever the Department requests documentation for quality control purposes.

(b) Documentation of income is not required for patients financially eligible pursuant to Rule .0202(g) of this Subchapter.

(c) ~~(b)~~For purposes of this Rule, earned income means salaries, wages, and self-employment income.

(d) ~~(c)~~Eligibility personnel are authorized to require documentation of any component used in computing a patient's annual net family income.

(e) ~~(d)~~Notwithstanding the provisions of Subparagraph (a)(2), eligibility personnel are not required to demand documentation of information concerning the earned income of the patient's family when reimbursement for inpatient services is requested through local health department delivery funds, 15A NCAC 21C .0200 or perinatal program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to amend rules cited as 21 NCAC 34B .0401; 34D .0202 and .0301.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 2:00 p.m. on November 13, 1995 at the State Employees' Credit Union Building, Board Room, 801 Hillsborough Street, Raleigh, NC 27603.*

Reason for Proposed Action:
21 NCAC 34B .0401 *- The Board sees a need for upgrading continuing education standards. The proposed amendment changes the lead time for approval of courses and addresses course publicity, number of hours required for various licenses, length of courses, security at courses and verification of attendance.*
21 NCAC 34D .0202 *- Some preneed sales licensees sell for several funeral homes. The proposed amendment provides that the Board files, and not the sales licensee's pocket card, will show the names of the funeral homes. This system will be more practical and less expensive for the Board to administer than the current system.*
21 NCAC 34D .0301 *- The Board wishes, as an accommodation, to give multi-branch funeral homes the right to choose where their preneed records are kept: either at a single or at several locations. The proposed amendment permits this.*

Comment Procedures: *Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the NC Board of Mortuary Science, P.O. Box 27368, Raleigh, NC 27611-7368.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0400 - CONTINUING EDUCATION

.0401 ESTABLISHMENT AND APPROVAL OF COURSES

~~The Board shall cause at least five hours of continuing~~

~~education courses to be offered to the licensees annually, either directly or through other organizations or persons procured for such purpose. The Board shall mail to each licensee for whose benefit the course is offered, at least 15 days prior to the date of enrollment, notice of the course and the amount of any registration fee to be charged.~~

(a) In addition to courses which it establishes, ~~The~~ the Board may approve other courses, provided that ~~descriptions of such courses~~ applications are submitted to the Board at least ~~30~~ 90 days prior to the date of enrollment. No course shall be approved unless the Board finds that the course will satisfy the purposes set forth in G.S. 90-210.25(a)(5).

(b) The Board shall mail to each licensee for whose benefit the course is offered, at least 15 days prior to the date of enrollment, notice of the course and the amount of any registration fee to be charged.

(c) Each calendar year licensees shall take continuing education courses as follows: funeral directors, five hours in subjects approved for funeral directors; embalmers, five hours in subjects approved for embalmers; and funeral service licensees, five hours in subjects approved for funeral service licensees. Alternatively, funeral service licensees may take two or three hours in subjects approved for funeral directors and two or three hours in subjects approved for embalmers, provided the total is at least five hours. No credit shall be given for hours carried forward from a previous year.

(d) The following standards apply to continuing education courses:

(1) One hour of continuing education credit shall be given for each 50 minutes of instruction.

(2) The minimum unit to be considered for approval shall be a course consisting of at least two hours of continuing education credit. Licensees who attend a portion of a course shall receive credit for each hour attended; however, no credit shall be given for any partial hour.

(3) A course which is two credit hours in length shall consist entirely of subjects for funeral director credit or entirely of subjects for embalmer credit or entirely of subjects for funeral service credit.

(4) The Board shall prepare forms for verifying attendance, and course providers shall distribute them to licensees in attendance. Providers shall retain records of attendance for two years.

(5) Course providers must make available the opportunity for complimentary monitoring of courses by Board members or their representatives.

(6) Distance learning, such as by television, qualifies only when monitoring is provided in the classroom.

(e) ~~All courses shall be established, and notices thereof given, by license category, and registration~~ A course must be open to all ~~persons~~ North Carolina licensees in the license category for which the course is approved.

(f) Course providers are responsible for verifying attendance at courses for credit according to this Rule. False verification, whether intentional or negligent, shall be cause for the Board to deny applications of providers.

(g) Course providers shall file the attendance forms with the Board, certifying licensees' attendance at courses, no later than the time when licensees apply for license renewal or reinstatement.

Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(5).

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0200 - LICENSING

.0202 PRENEED SALES LICENSE

(a) Subject to G.S. 90-210.69(c), holding a funeral director's license, issued by the Board, or a funeral service license, issued by the Board, is the qualification to be eligible for a preneed sales license.

(b) The preneed sales licensee may engage, under the preneed sales license, in the following preneed funeral planning activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):

(1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;

(2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;

(3) sell, on a preneed basis, funeral services and merchandise;

(4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;

(5) make funeral arrangements on a preneed basis; and

(6) sign preneed contracts.

No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided, however, no preneed sales license is required solely for the sale of an insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.

(c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed

funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.

(d) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. ~~The card~~ Upon making application for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral ~~contracts, and if~~ contracts. The applicant shall pay an application fee and an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A .0201(c) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee ~~shall~~ shall, within 10 days, file an amended list with the Board ~~make a new application for a preneed sales license~~ and shall pay the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this Paragraph shall not exceed the maximums, respectively, set by statute.

(e) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

Statutory Authority G.S. 90-210.25(a)(4); 90-210.67(a),(c); 90-210.69(a).

SECTION .0300 - OPERATIONS

.0301 RECORD AND BOOKKEEPING REQUIREMENTS

(a) Each preneed funeral establishment licensee shall maintain ~~at the address stated on its license~~ a general file containing:

(1) a copy of each of its license applications, including applications for license renewals;
(2) copies of all preneed examination reports; and
(3) copies of all annual reports to the Board.

(b) Each such licensee shall maintain ~~maintain, at the same address,~~ files containing all preneed funeral contracts purchased. The files shall be maintained separately for outstanding contracts and for matured or cancelled contracts. The outstanding contract file shall include a copy of each preneed contract filed alphabetically or numerically. The matured or cancelled contract file shall contain a copy of each preneed contract, together with a copy of the certificate of performance, and shall be filed either chronologically or alphabetically by year.

(c) Each such licensee shall maintain ~~maintain, at the same address,~~ the following records:

(1) a contract register listing the purchaser's name and final disposition of the contract;
(2) a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
(3) an individual ledger for each contract purchaser showing the purchaser's and beneficiary's names, amount of the contract, amount paid on the contract, amount retained free of trust pursuant to G.S. 90-210.61(a)(2), deposits to trust, withdrawals from trust as permitted by law and the reasons therefor, interest on deposits, total amount of the trust, and amounts paid to insurance companies for insurance-funded contracts;
(4) copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings; and
(5) copies of applications for insurance, insurance policies, beneficiary designation documents and instruments of assignment.

(d) When two or more preneed funeral establishment licensees are wholly owned by the same entity, all of the copies and records required to be maintained by Paragraphs (a) and (b) of this Rule may be maintained at one address of the licensee, or they may be divided among and maintained at various addresses of the licensees, in their discretion.

~~(d)~~(e) The copies required to be maintained by Paragraph (a) of this Rule shall be retained a minimum of ten years following their origination. The copies and records required to be maintained by Paragraphs (b) and (c) of this Rule shall be retained a minimum of ten years following the substitution of a different funeral establishment to perform the preneed funeral contract, the revocation of the preneed funeral contract or the death of the contract beneficiary, whichever occurs first.

~~(e)~~(f) Individual ledgers and records of the depository financial institutions shall be balanced at least annually to ensure accuracy.

Statutory Authority G.S. 90-210.69(a); 90-210.68(a).

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CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Certification Board for Social Work intends to amend rule cited as 21 NCAC 63 .0306.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 17, 1995 at 130 S. Church Street, Asheboro, NC 27203.*

Reason for Proposed Action: *Ratification of Senate Bill 642, "An Act to Update The Fee Structure of the North Carolina Board for Social Work", 1995 Session, NC General Assembly, effective July 1, 1995. Bill amends GS 90B-6(f).*

Comment Procedures: *Submit comments in writing to NCCBSW, PO Box 1043, Asheboro NC 27204, or by fax transmission to (910) 625-1680, by November 1, 1995.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

SECTION .0300 - EXAMINATIONS

.0306 EXAMINATION FEES

(a) An examination fee of ~~one hundred dollars ($100.00)~~ one hundred twenty-five dollars ($125.00) will be assessed for administration and processing of any written examination.

(b) An applicant who fails to appear for an examination shall be assessed a fee of ~~one hundred dollars ($100.00)~~ one hundred twenty-five dollars ($125.00) in order to take the examination at a later date.

Statutory Authority G.S. 90B-6.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

DEPARTMENT OF COMMUNITY COLLEGES

Community Colleges

23 NCAC 2C .0604 - Program Review	*RRC Objection*	*06/14/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2B .0202 - Definitions	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters	*RRC Objection*	*07/13/95*
Agency Revised Rule (Noticed in 9:23, 1979)	*Obj. Removed*	*07/13/95*
15A NCAC 2H .1003 - Coastal Stormwater Disposal	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
15A NCAC 2H .1008 - Design of Stormwater Management Measures	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	*RRC Objection*	*06/14/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

Wildlife Resources and Water Safety

15A NCAC 10F .0313 - Hyde County	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

HUMAN RESOURCES

Facility Services

10 NCAC 3C .3001 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .3108 - Suspension of Admissions	*RRC Objection*	*07/13/95*
10 NCAC 3C .3205 - Discharge of Minor or Incompetent	*RRC Objection*	*07/13/95*
10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights	*RRC Objection*	*07/13/95*
10 NCAC 3C .3502 - Bylaws	*RRC Objection*	*07/13/95*
10 NCAC 3C .3602 - Responsibilities	*RRC Objection*	*07/13/95*
10 NCAC 3C .3603 - Personnel Policies and Practices	*RRC Objection*	*07/13/95*
10 NCAC 3C .3607 - Personnel Health Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3C .3608 - Insurance	*RRC Objection*	*07/13/95*
10 NCAC 3C .3704 - Status	*RRC Objection*	*07/13/95*
10 NCAC 3C .3902 - Manager	*RRC Objection*	*07/13/95*
10 NCAC 3C .3904 - Patient Access	*RRC Objection*	*07/13/95*
10 NCAC 3C .4003 - Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3C .4102 - Classification of Optional Emergency Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4104 - Medical Director	*RRC Objection*	*07/13/95*
10 NCAC 3C .4203 - Nursing Staff	*RRC Objection*	*07/13/95*
10 NCAC 3C .4303 - Nursing Services Maternal Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4307 - Nursing Staff of Neonatal Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4401 - Organization	*RRC Objection*	*07/13/95*

10 NCAC 3C .4502 - Pharmacist	*RRC Objection*	*07/13/95*
10 NCAC 3C .4512 - Medications Dispensed	*RRC Objection*	*07/13/95*
10 NCAC 3C .4702 - Organization	*RRC Objection*	*07/13/95*
10 NCAC 3C .4703 - Sanitation and Safety	*RRC Objection*	*07/13/95*
10 NCAC 3C .4704 - Distribution of Food	*RRC Objection*	*07/13/95*
10 NCAC 3C .4705 - Nutritional Support	*RRC Objection*	*07/13/95*
10 NCAC 3C .4801 - Organization	*RRC Objection*	*07/13/95*
10 NCAC 3C .4905 - Tissue Removal and Disposal	*RRC Objection*	*07/13/95*
10 NCAC 3C .5002 - Delivery of Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules	*RRC Objection*	*07/13/95*
10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.	*RRC Objection*	*07/13/95*
10 NCAC 3C .5205 - Seclusion	*RRC Objection*	*07/13/95*
10 NCAC 3C .5302 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision	*RRC Objection*	*07/13/95*
10 NCAC 3C .5315 - Dental Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5318 - Activities and Recreation	*RRC Objection*	*07/13/95*
10 NCAC 3C .5319 - Social Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5325 - Ventilator Dependence	*RRC Objection*	*07/13/95*
10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3C .5501 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	*RRC Objection*	*07/13/95*
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	*RRC Objection*	*07/13/95*
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	*RRC Objection*	*07/13/95*
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .6102 - List of Referenced Codes and Standards	*RRC Objection*	*07/13/95*
10 NCAC 3C .6208 - Obstetrical Department Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3H .2001 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3H .2201 - Administrator	*RRC Objection*	*07/13/95*
10 NCAC 3H .2202 - Admissions	*RRC Objection*	*07/13/95*
10 NCAC 3H .2203 - Patients Not to be Admitted	*RRC Objection*	*07/13/95*
10 NCAC 3H .2206 - Medical Director	*RRC Objection*	*07/13/95*
10 NCAC 3H .2209 - Infection Control	*RRC Objection*	*07/13/95*
10 NCAC 3H .2212 - Quality Assurance Committee	*RRC Objection*	*07/13/95*
10 NCAC 3H .2301 - Patient Assessment and Care Planning	*RRC Objection*	*07/13/95*
10 NCAC 3H .2302 - Nursing Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3H .2401 - Maintenance of Medical Records	*RRC Objection*	*07/13/95*
10 NCAC 3H .2501 - Availability of Physician's Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	*RRC Objection*	*07/13/95*
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2604 - Drug Procurement	*RRC Objection*	*07/13/95*
10 NCAC 3H .2605 - Drug Storage and Disposition	*RRC Objection*	*07/13/95*
10 NCAC 3H .2606 - Pharmaceutical Records	*RRC Objection*	*07/13/95*
10 NCAC 3H .2607 - Emergency Drugs	*RRC Objection*	*07/13/95*
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2801 - Activity Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2802 - Social Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .3003 - Ventilator Dependence	*RRC Objection*	*07/13/95*

10 NCAC 3H .3004 - Brain Injury Long-Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3021- Physician Req. for Inpatient Rehab. Facilities or Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	*RRC Objection*	*07/13/95*
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3H .3103 - Site	*RRC Objection*	*07/13/95*
10 NCAC 3H .3201 - Required Spaces	*RRC Objection*	*07/13/95*
10 NCAC 3H .3401 - Heating and Air Conditioning	*RRC Objection*	*07/13/95*
10 NCAC 3H .3404 - Other	*RRC Objection*	*07/13/95*
10 NCAC 3O .0305 - Persons Subject to Licensure	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0607 - License Year	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3U .0705 - Special Training Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 3U .1403 - Aquatic Activities	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:
***10 NCAC 3C** .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.*
***10 NCAC 3H** .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.*

Medical Assistance

10 NCAC 26H .0302 - Reporting Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0304 - Rate Setting Methods for Non-state Facilities	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0305 - Allowable Costs	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0308 - Rate Appeals	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board

24 NCAC 5 .0414 - Alliance Participation Fee		
Rule Withdrawn by Agency		*06/14/95*
Agency Resubmitted Rule	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9B .0202 - Responsibilities of the School Director	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9B .0206 - Basic Training -- Correctional Officers	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9D .0104 - Intermediate Law Enforcement Certificate	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9D .0105 - Advanced Law Enforcement Certificate	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

LICENSING BOARDS AND COMMISSIONS

Board of Certified Public Accountant Examiners

21 NCAC 8M .0102 - Registration Requirements	*RRC Objection*	*07/13/95*
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 8M .0104 - Firms Deemed in Compliance	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
21 NCAC 8N .0307 - Firm Names	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

Board of Medical Examiners

21 NCAC 32H .0102 - Definitions	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 32H .0506 - Certification Requirement: Emergency Medical Dispatcher	*RRC Objection*	*08/10/95*
21 NCAC 32N .0002 - Continuances	*RRC Objection*	*08/10/95*

Board of Nursing Home Administrators

21 NCAC 37 .0302 - Initial Licensure Fee		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0404 - Continuing Education Programs of Study		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0502 - Application to Become Administrator-In-Training	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
21 NCAC 37 .0904 - Biennial Registration Requirements		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0914 - Duplicate Licenses		
Rule Withdrawn by Agency		*07/13/95*

Board of Pharmacy

21 NCAC 46 .1601 - Pharmacy Permits	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .1608 - Device and Medical Equipment Permits	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2601 - Dispensing and Delivery	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
21 NCAC 46 .2602 - Orders		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 46 .2603 - Education and Training	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2604 - Records	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2605 - Registration of Non-Pharmacists	*RRC Objection*	*08/10/95*

Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2606 - Conveying Warnings	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2609 - Rehabilitation Equipment	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2803 - Req/pharmacies Dispensing Sterile Parenteral Pharmaceuticals	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1209 - Nonprofit Securities	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1314 - Escrow Agreements	*RRC Objection*	*08/10/95*
18 NCAC 6 .1401 - Application for Registration of Dealers	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1402 - Application for Registration of Salesmen	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1413 - Salesman Examination Required	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1702 - Application for Investment Adviser Registration	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1713 - Invest Adviser Merger/Consolidation/Acquisition/Succession	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1901 - Application for Registration of Athlete Agents	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

STATE PERSONNEL

Office of State Personnel

25 NCAC 1C .0405 - Temporary Appointment	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1C .0407 - Temporary Part-Time Appointment	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1D .2001 - Coverage	*RRC Objection*	*07/13/95*
Agency Repealed Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1K .0312 - Eligibility	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ADMINISTRATION				
Division of Purchase and Contract				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
State Construction Office				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:03 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:07 NCR 619
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Ben Sproul and Steve Pauls v. Alcoholic Beverage Control Comm	94 ABC 1046	Chess	08/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Chess	05/11/95	
Vladimir Walter Kozlik Jr. v. Alcoholic Beverage Control Commission	94 ABC 1754*[12]	Mann	08/02/95	10:11 NCR 960
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Alcoholic Beverage Control Commission v. Weisner, Inc.	95 ABC 0068	West	06/07/95	
Robert Louis Reese v. Alcoholic Beverage Control Commission	95 ABC 0074	Chess	05/25/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
Legwin Z. Williams v. Alcoholic Beverage Control Commission	95 ABC 0224	Nesnow	05/31/95	10:06 NCR 417
Taleb Abed Rahman v. Alcoholic Beverage Control Commission	95 ABC 0323	Phipps	08/02/95	
Sherrill Douglas Langston v. Alcoholic Beverage Control Commission	95 ABC 0415	Nesnow	08/01/95	10:10 NCR 868
Alcoholic Beverage Control Comm. v. Janice Mae Miles	95 ABC 0434	West	07/20/95	
Imran Ali Hameerah v. Alcoholic Beverage Control Commission and City of Raleigh	95 ABC 0477	Phipps	07/14/95	
Alcoholic Beverage Control Commission v. Vladimir Walter Kozlik Jr.	95 ABC 0518*[12]	Mann	08/02/95	10:11 NCR 960
Mychal R. Hill v. Alcoholic Beverage Control Commission	95 ABC 0617	Morrison	09/08/95	
Alcoholic Bev Cont Comm. v. Partnership, T/A Royal Knights Soc Club	95 ABC 0711	Phipps	09/14/95	
Alcoholic Beverage Control Comm. v. Nancy Wheeler Wolfe	95 ABC 0713	Phipps	09/14/95	
CRIME CONTROL AND PUBLIC SAFETY				
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Jann Mitchell Stanley v. Private Protective Services Board	95 DOJ 0420	Morrison	05/24/95	
Donald Wayne Clark v. Private Protective Services Board	95 DOJ 0444	Phipps	07/14/95	10:09 NCR 805
Richard Frank v. Private Protective Services Board	95 DOJ 0610	Phipps	08/10/95	
Marvin E. Shackleford v. Private Protective Services Board	95 DOJ 0611	Phipps	07/18/95	
Julius T. Fairley v. Private Protective Services Board	95 DOJ 0612	Phipps	07/20/95	
James L. McLeary, Jr. v. Private Protective Services Board	95 DOJ 0613	Phipps	07/18/95	
Bobby E. Smithey v. Private Protective Services Board	95 DOJ 0717	West	08/23/95	10:12 NCR 1039
Frederick B. Moore, Jr. v. Private Protective Services Board	95 DOJ 0766	Morrison	09/01/95	
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Occupational Safety & Health Division				
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R.J. Scott, Pres. Pirate Enterprises, Inc. v. Labor, Wage & Hour Div.	94 DOL 1524	West	03/23/95	
PRACTICING PSYCHOLOGISTS				
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PUBLIC INSTRUCTION				
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S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education	93 EDC 0742	Phipps	05/30/95	
William Hewett v. State Board of Education	94 EDC 0533	Gray	03/31/95	10:02 NCR 179
James Midgette v. State Board of Education	94 EDC 1401	Reilly	05/02/95	
Deborah R. Crouse v. State Board of Education	95 EDC 0003	Chess	04/10/95	
Bobby G. Little v. Department of Public Instruction	95 EDC 0168	Phipps	03/20/95	
Tonya Marie Snipes and Robert Leon Snipes v. Orange County Schools	95 EDC 0225	Mann	05/15/95	
Vance County Schools v. Haywood Yarborough	95 EDC 0235	Mann	08/04/95	
Laverne K. Suggs v. Department of Public Instruction	95 EDC 0384	Nesnow	07/12/95	
Lavern K. Suggs v. Guilford County Schools	95 EDC 0385	Nesnow	06/02/95	
Kenneth G.H. Leftwich v. State Board of Education	95 EDC 0405	Nesnow	05/25/95	
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Phillip S. Banks, III v. North Carolina State Bar	95 BAR 0861	Morrison	08/18/95	

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Della Brown v. Caswell County Health Department	94 OSP 0834	Nesnow	06/12/95	
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Peter A. Fore v. N.C. Central University	93 OSP 0189	Nesnow	06/13/95	
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T. Sherwood Jernigan v. Dept. of Commerce, Savings Institution Div.	94 OSP 0775	West	05/25/95	
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Nancy Gilchrist v. Department of Correction	94 OSP 0121	West	03/09/95	
Howard Gray Sadler v. Correction, Div. of Adult Probation/Parole	94 OSP 0332	West	05/15/95	
Thomas Wayne Smathers v. Department of Correction	94 OSP 0590	West	03/23/95	
George J. McClease, Jr. v. Department of Correction	94 OSP 0644	Gray	04/19/95	
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Ruth Kearney v. Department of Correction	94 OSP 1807	Becton	03/13/95	
Ann R. Fletcher v. Department of Correction	95 OSP 0123	Chess	08/21/95	
James W. Hughes v. Department of Correction, Blue Ridge Unit Avery	95 OSP 0334	Becton	07/25/95	
Dennis Harrell v. Department of Correction	95 OSP 0440	Phipps	09/05/95	10:13 NCR 1209
William E. Norwood, Jr. v. Department of Correction	95 OSP 0500	Gray	08/16/95	
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Robert W. Beasley v. Crime Control & Public Safety, St. Highway Patrol	94 OSP 1821	Morrison	08/10/95	10:11 NCR 965
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Shannon Caudill v. Office of the District Attorney for Judicial District 17-B, and Administrative Office of the Courts	95 OSP 0188	Nesnow	03/20/95	
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Paul E. Hunter v. Dorothea Dix Hospital	95 OSP 0504	Gray	07/12/95	
Durham County Health Department				
Laurie A. Gerhard v. Durham County Health Department	95 OSP 0220	Phipps	08/17/95	10:12 NCR 1043
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Helen E. Wolfe v. East Carolina University, Dept. of Biology	94 OSP 1558	Reilly	09/07/95	
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0038*[7]	Becton	06/08/95	
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0057*[7]	Becton	06/08/95	
Edgecombe County Health Department				
Ronald E. Wooten v. Edgecome County Health Department	94 OSP 1209	Gray	07/10/95	
Department of Environment, Health, and Natural Resources				
Babette K. McKemie v. EHNR, Div. of Environmental Management	94 OSP 0358	Chess	05/31/95	
Fayetteville State University				
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James Harrison v. Black Mountain Center, Dept. of Human Resources	94 OSP 0994*[11]	Gray	07/31/95	
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William H. Cooke v. DHR, Cherry Hospital	93 OSP 1547	Gray	03/16/95	
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Gaston County Department of Social Services				
Bobbie J. Gilliam v. Gaston County Department of Social Services	94 OSP 0770	West	05/24/95	
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Vernon E. Grosse v. Iredell County Department of Social Services	94 OSP 0282	Becton	03/09/95	
Bonnie N. Bellamy v. Iredell County Department of Social Services	94 OSP 0739	Chess	03/01/95	10:01 NCR 48
Richmond County Department of Social Services				
Emma Jane Bradley v. Richmond County Dept. of Social Services	95 OSP 0055	Reilly	07/18/95	10:09 NCR 809
Wake County Department of Health				
Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir.	94 OSP 1032*[8]	Nesnow	06/12/95	
Sabrina R. Crowder v. Wake County/Health Dept., Richard Stevens	94 OSP 1072*[8]	Nesnow	06/12/95	
Thomasine D. Avery v. Wake County/Health Department	94 OSP 1074*[8]	Nesnow	06/12/95	
Wake County Department of Social Services				
Olivia L. Jordan v. Wake County/Department of Social Services	94 OSP 1179*[8]	Nesnow	06/12/95	
Department of Labor				
Michael Robert Smith v. Department of Labor	94 OSP 0610	Nesnow	06/09/95	
Lee-Harnett Area Mental Health, Developmental Disabilities, and Substance Abuse Authority				
Julie Dyer v. Lee-Harnett Area MH/DD/SA Authority	94 OSP 0750	Gray	03/20/95	
North Carolina Special Care Center				
Lynn Banasiak Bass v. North Carolina Special Care Center	95 OSP 0419	Phipps	08/01/95	
North Carolina State University				
Artelia S. Clark v. N.C. State University	89 OSP 0612	Nesnow	07/07/95	
Wesley Brown v. N.C. State University	94 OSP 1173	Reilly	06/30/95[1]	10:08 NCR 700
David L. Bauer v. North Carolina State University	95 OSP 0044	Morrison	04/25/95	
Billy Ray Kelly v. NCSU Physical Plant	95 OSP 0130	West	03/22/95	
Heather Ann Waskiowicz v. NCSU, Dept. of Public Safety	95 OSP 0213	Phipps	07/06/95	

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Michael E. Kornegay v. Department of Transportation	93 OSP 1700	Gray	03/24/95	
Robert F. Goins v. Department of Transportation	94 OSP 0281	Chess	05/30/95	
Esther Doe Murphy v. Department of Transportation	95 OSP 0114	Gray	07/10/95	
Judy H. Arnold v. Department of Transportation, Div. of Motor Vehicles	95 OSP 1075	Becton	07/31/95	
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Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:04 NCR 287
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Channie S. Chapman v. Bd/Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	
Bryan L. Basden v. Retirement Systems Division	95 OSP 0171	Chess	06/21/95	
Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	
Tammy Evonne Ashcroft Brownv. Bd/Tr.//NC Local Gov. Emp. Ret Sys.	95 DST 0404	Phipps	07/27/95	10:10 NCR 872
UNIVERSITY OF NORTH CAROLINA				
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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 DHR 1617

SAMUEL SIMMONS and WIFE, ALPHIA MACK SIMMONS, Petitioners, v. NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES DIVISION OF CHILD DEVELOPMENT Respondent.	))))))))))	RECOMMENDED DECISION

This matter was heard before Beecher R. Gray, Administrative Law Judge, on July 10, 1995 in Charlotte, North Carolina. The parties were granted leave to file proposed findings and written arguments. Petitioners and Respondent filed proposals and arguments on August 11, 1995 and August 14, 1995, respectively.

APPEARANCES

Petitioners: Richard A. Lucey, Esq.

Respondent: Jane Rankin Thompson
Assistant Attorney General

ISSUE

Whether Respondent's revocation of Petitioners' Family Foster Home License on the grounds of neglect of a child placed in Petitioners' care, by denying admission to that child after curfew, is supported by the evidence.

FINDINGS OF FACT

1. The parties received notices of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper in all respects.

2. Petitioners Samuel Simmons and wife, Alphia Mack Simmons are residents of Mecklenburg County, North Carolina. Petitioners hold a Family Foster Home License issued by Respondent. Prior to the events in controversy in this case, Petitioners never had been the subject of an abuse or neglect complaint concerning foster children in their care.

3. As of the spring of 1994, Petitioners had several children in their home. The children in the home included Allison Hicks, 10 year-old daughter of Petitioner Alphia Mack Simmons by a prior marriage; Michael Simmons, a 14 year old adopted son of Petitioner Samuel Simmons; Samantha Simmons, an infant girl being adopted by Petitioners; 13 year-old Quinto Real (known as Rico); and his biological brother, 14 year-old Norberto Real (known as J.R.).

4. Rico and J.R. Real were placed with Petitioners in July, 1991. From July, 1991 until May, 1994, Rico and J.R. resided with Petitioners continuously except for the period from February, 1992 through August 14, 1992 when J.R. was temporarily placed at the Kennedy Campus.

5. From July, 1991 through May, 1994, J.R. and Rico Real were in the legal custody of the Mecklenburg County Department of Social Services. In 1993, the parental rights of the biological parents of Rico and J.R. were terminated. Rico Real was formally adopted by Petitioners under order entered during August, 1994. During J.R.'s placement with Petitioners, it was anticipated by all parties that he also would be adopted by Petitioners.

6. In January, 1994, Permanancy Planning Social Worker Maureen Geier became J.R.'s caseworker. She

was supervised by Paul Risk, the Unit Coordinator of the Permanancy Planning Unit of the Mecklenburg County Department of Social Services.

7. Petitioners experienced more difficulty with J.R. than with Rico. J.R. "acted out" once or twice per month but Petitioners felt that he was controllable. During the spring of 1994, J.R.'s grades in school began to drop drastically; his teachers became concerned. Petitioners discussed the falling grades with J.R. As a follow-up to this discussion, Petitioners placed J.R. on certain restrictions, including:

1. no television during school week;

2. Petitioners were to go over J.R.'s homework and would exchange notes with teachers; and

3. J.R. was to receive no allowance so long as his grade situation continued to deteriorate.

8. Prior to April 29, 1994, during the spring of 1994, Petitioners twice called the on-call social worker at the Mecklenburg County Department of Social Services to request that J.R. be picked up because of J.R.'s behavior and attitude. Mecklenburg Department of Social Services did not pick J.R. up on either of these occasions because it did not have any alternative placement for J.R. at the time. During the Spring of 1994, Petitioner Alphia Mack Simmons' fur coat disappeared. Petitioners suspect that J.R. took the coat. A refund check from the principal at J.R.'s school was sent home via J.R. who kept the check and did not turn it over to Petitioners. J.R. took Petitioner Samuel Simmons' checkbook and wrote over $800 in unauthorized checks before Petitioner could stop him.

9. Petitioners confronted J.R. in late March or early April, 1994 about his involvement with illegal drugs. J.R. informed Petitioners that he was not using drugs himself but was selling them. He informed Petitioners that he could make more money selling drugs on the week-ends than Petitioners could make and requested to be allowed to stay with Petitioners only five days per week.

10. Soon after Petitioners confronted J.R. about his involvement with illegal drugs, Rico told J.R. that he was destroying the family. J.R. got an axe and said that he was going to kill Rico; Petitioners had to intervene to prevent a serious incident from becoming worse.

11. On April 29, 1994, Petitioner Samuel Simmons telephoned J.R.'s assigned caseworker, Maureen Geier, and told her about J.R.'s difficulties including his grade dropoff, his involvement with drugs, and his threat to kill Rico with an axe. Petitioner expressed concern for the safety of his family, stating to Caseworker Geier that strange cars were coming around the house and strange phone calls were coming to his home. Petitioner informed Maureen Geier that J.R. had run away on a previous occasion.

12. Caseworker Geier made a home visit to Petitioners' home on May 2, 1994. J.R. was not in the home that day, having run away the day before. Petitioners had not, prior to her visit on May 2, 1994, reported to anyone at the Department of Social Services that J.R. had run away on May 1, 1994. Petitioner Samuel Simmons reported to Caseworker Geier during the May 2, 1994 home visit that J.R. had stolen checks from Petitioners, that he had been caught shoplifting, and that he had requested to stay in Petitioners' home only during the week so that he could sell drugs on the week-ends.

13. Maureen Geier prepared a secure custody order and had J.R. picked up at his school on May 4, 1994 and taken to the "Relatives", a shelter for juveniles. Petitioners were informed on May 4, 1994 by the Mecklenburg Department of Social Services that J.R. was at the "Relatives" and that Petitioners should pick him up, which they did.

14. In addition to calling Caseworker Geier on April 29, 1994, Petitioner Samuel Simmons also called Paul Risk who supervised Maureen Geier. Paul Risk instructed Petitioner that if he became concerned for the safety of his family because of J.R.'s actions, that he should refuse to admit J.R. into the Simmons home and then call the police and the Mecklenburg County Department of Social Services. Paul Risk also offered to place the Simmons family in a motel overnight at Department expense if the situation became so dangerous as to warrant it.

15. On May 9, 1994, Petitioner Samuel Simmons had back surgery. J.R. was with Petitioner in the hospital all day on May 9, 1994 and until almost 8 p.m. on May 10, 1994, when Petitioner was discharged.

16. Petitioner went directly home and to bed in accordance with his doctor's instructions after his discharge at approximately 8 p.m. on May 10, 1994. At about 8:30 p.m. that night, J.R. began knocking on the door of Petitioners' home, cursing and apparently out of control. Petitioner Samuel Simmons went to the door and told J.R. that he was not going to come into the Simmons home until he calmed down and apologized. At about 10:00 p.m., J.R. returned to the Simmons home with a neighbor. Petitioner Samuel Simmons explained to the neighbor what had happened and that J.R. had been instructed to calm down and apologize before being admitted, whereupon the neighbor left. J.R. also left but returned approximately 30 minutes later and apologized for his acting out. He was then admitted to the Simmons home and went to bed. Petitioner Samuel Simmons called the on-call social worker at the Mecklenburg County Department of Social Services and requested that J.R. be picked up. One and one-half hours later the Department picked J.R. up. He has not returned to the Petitioners' home since that time.

17. A referral or complaint was received by the Mecklenburg County Department of Social Services alleging that Petitioners had neglected J.R. on May 10, 1994 by refusing entry to him on the night of May 10, 1994 as punishment for his acting out that evening. In accordance with prescribed operating procedure, the investigation of this allegation of neglect was referred to and handled by the Gaston County Department of Social Services.

18. Social Worker Kelly Daniels of the Gaston County Department of Social Services conducted the investigation. She interviewed the children residing in the Simmons household as well as J.R., who was then residing in another specialized foster care home. She additionally interviewed Petitioner Samuel Simmons, a neighbor of Petitioners, Maureen Geier, and Paul Risk. Petitioner Alphia Mack Simmons was not interviewed either because she did not wish to be interviewed or because her husband refused to allow her to be interviewed. The relationship between Social Worker Daniels and Petitioner Samuel Simmons deteriorated so that it was unworkable by the time she interviewed him for the second time on June 9, 1994.

19. The neighbor informed Social Worker Daniels that J.R. had spent the night at his house on two previous occasions. J.R. also reported to the on-call social worker on May 10, 1994 that he had previously been denied access to the home by Petitioners.

20. All of the reported information regarding J.R.'s being denied admission to Petitioners' house on two previous occasions came from the neighbor or from J.R. The neighbor's information, according to the evidence produced in this contested case hearing, came by and through representations made by J.R. Neither the neighbor nor J.R. testified during this contested case hearing.

21. J.R.'s caseworker, Maureen Geier, testified that she is concerned about J.R.'s capacity to tell the truth. Petitioner Samuel Simmons has no doubt that J.R. has a problem with his capacity or willingness to tell the truth. In a document entitled "Court Summary", presented to the Juvenile or District Court in Mecklenburg County on or about August 2, 1994, Social Worker Maureen Geier described J.R.'s current progress, in pertinent part: "[w]hile he is generally doing well with his chores, he continues to try to manipulate the professionals and other adults in his life by not telling the truth".

22. It is specifically found as a fact that all evidence admitted in this contested case, such as the statements made by Petitioners' neighbor to Social Worker Daniels, which is grounded upon statements made by J.R., is inherently unreliable because the statements of J.R. are not credible.

23. In August, 1994 J.R. was moved into a group home. He called Petitioner Samuel Simmons when he got into trouble at the group home. Petitioner was allowed to visit J.R. in the group home. Petitioner has not allowed J.R. to visit his home since he was removed by the on-call worker on May 10, 1994.

24. As of the August 2, 1994 Court Summary, the Mecklenburg County Department of Social Services, which continues to have official custody of J.R., advocates that J.R. be adopted by Petitioners despite the decision of the Gaston County Department of Social Services to "substantiate" the neglect allegation against Petitioners concerning the events of May 10, 1994 with J.R. The Department finds and believes that J.R. is "very bonded" with the Simmons family. The Department also recommends that a child-specific license be issued to Petitioners so that J.R. can be returned to the Simmons home even though the Department envisions Petitioners' foster care license being revoked because of the May 10, 1994 events.

25. On November 1, 1994, Respondent issued a letter revoking the foster home license held by Petitioners for denying access to the foster home to a foster child on one or more occasions.

26. The North Carolina General Statutes define "neglected juvenile" as [a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker".... N.C. Gen. Stat. Section 7A-517(21) (Cum. Supp. 1994).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact. I make the following Conclusions of Law.

1. The parties are properly before the Office of Administrative Hearings.

2. Respondent has the burden of proof in this contested case hearing and must show, by a preponderance of substantial evidence, that Petitioners committed neglect against J.R. Real, a foster child in Petitioners' care. Specifically, Respondent must show that Petitioners have failed to render proper care, supervision, or discipline of J.R.

3. Respondent has failed to carry the burden of establishing by a preponderance of evidence that Petitioners neglected J.R. by refusing entry into the foster home to him on one or more occasions as charged in Respondent's revocation letter to Petitioners, dated November 1, 1994. The evidence shows that Petitioners did in fact admit J.R. into the home on May 10, 1994 after admonishing him to calm down and apologize for his behavior. Given that J.R. and Petitioners have established a bond, this parental direction, administered within the background of that bond between those individuals, succeeded in calming J.R. down and resulted in his admission into the foster home. There is no credible evidence that Petitioners neglected J.R., within the meaning of G.S. 7A-517(21), by refusing his admission on May 10, 1994 or on any other occasion.

4. Respondent's decision to revoke the foster home license of Petitioners for neglect of J.R. by denying access to the foster home to J.R. on one or more occasions is not supported by the evidence and should be reversed.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that Respondent reverse its decision to revoke the foster home license held by Petitioners Samuel and Alphi Mack Simmons because of insufficient evidence that Petitioners neglected J.R. within the meaning of G.S. 7A-517(21) by denying access to the home to him on May 10, 1994 or on any other occasion.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Human Resources

This the 13th day of September, 1995.

Beecher R. Gray
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
95 OSP 0440

DENNIS HARRELL, Petitioner, v. NORTH CAROLINA DEPARTMENT OF CORRECTION, Respondent.	))))))))	RECOMMENDED DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT

THIS MATTER came on to be heard by Administrative Law Judge Meg Scott Phipps on July 17, 1995 upon consideration of Respondent's Motion to Dismiss the petition for contested case pursuant to G.S. 1A-1, Rules 12(b)(1), (2) & (6) of the North Carolina Rules of Civil Procedure and 26 NCAC 3.0101 and 3.0115.

APPEARANCES

For Petitioner: Stratton C. Strand
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For Respondent: Michelle Bradshaw
Associate Attorney General
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P.O. Box 629
Raleigh, North Carolina 27602

ISSUES

1. Whether or not the Office of Administrative Hearings has subject matter jurisdiction to hear this matter pursuant to G.S. 1A-1, Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

2. Whether or not the Office of Administrative Hearings has personal jurisdiction to hear this matter pursuant to G.S. 1A-1, Rule 12 (b)(2) of the North Carolina Rules of Civil Procedure.

3. Whether or not the Petitioner has failed to state a claim upon which relief can be granted pursuant to G.S. 1A-1, Rule 12 (b)(6) of the North Carolina Rules of Civil Procedure.

After consideration of the pleadings, the law and the submissions of the parties, the undersigned finds the following:

UNCONTROVERTED FACTS

1. Petitioner is employed as a Maintenance Mechanic V with the Department of Correction at Tillery Correctional Center. He has been employed by the State for over eighteen years and is presently at pay grade level 66. Prior to November 1993, Petitioner worked at the Caledonia-Odom Correctional Complex which comprised the prison units of Caledonia, Halifax, Odom and Tillery. This unit was dismantled in 1993 and Petitioner was transferred to Tillery with no reduction in pay, position or benefits.

2. Respondent is a department of the State of North Carolina which has the authority to operate and manage North Carolina's prison system in its Division of Prisons.

3. Between 1986 and the fall of 1992, Petitioner and seven other maintenance employees of the Respondent

were required to be on rotating restrictive weekend on-call during assigned weekends. Between 1989 and 1992, these employees were allowed to be on-call with the use of beepers so they would not be completely restricted to their homes. After the fall of 1992, Petitioner was not required to be on-call.

4. Also from 1987 until 1992, Petitioner alleges that he had numerous work and personality problems with another employee, Mr. Chester Allsbrook, which actually came to physical altercations and threats.

5. In November 1993, the Caledonia-Odom Complex maintenance section was disbanded and its members absorbed by three prisons: Caledonia, Odom and Tillery. Ed Nelson, previously the Complex maintenance supervisor, was made maintenance supervisor at Caledonia with a projected staff of 16. David Carr, previously a pay grade 66 maintenance mechanic, was promoted to pay grade 71 and made maintenance supervisor at Odom with a projected staff of 15. Petitioner was assigned to Tillery as the only maintenance mechanic. Petitioner was advised that Tillery required only one maintenance employee because of its small size, and it was stated that Petitioner was chosen for the job because of his ability to handle any variety of maintenance problem.

6. Petitioner wrote a letter to Nathan Rice, Institution Commander at the time, on October 28, 1993, complaining about the dismantling of the Caledonia-Odom Complex. Petitioner set out in the letter the nature of his complaint and the facts leading up to the complaint. Petitioner stated:

> When the breakup was announced [in a June 1993 meeting], we were told that each institution would have its own maintenance staff and supervisor. David Carr and I were asked separately which unit we wanted to supervise. By previous agreement between David and I, he chose Odom and I chose Caledonia. I was then told that Ed Nelson had been assigned to Caledonia. **I had expected this so I then chose Tillery institution.**

(Petitioner's exhibit to Petitioner's Response to Respondent's Motion to Dismiss) (emphasis added). According to Petitioner, he was also advised in the June 1993 meeting that he would be made a supervisor at a pay grade 70 or 71 and that, although there was to be only one maintenance personnel at Tillery at the time, four additional positions would be asked for in the summer session of the legislature. Later he was told that the additional positions were not asked for in the summer session but would be in the "fall session." Again according to Petitioner's letter, he was told in July 1993 that the one maintenance position at Tillery was eliminated and therefore, he would no longer be made a supervisor because there would be no one to supervise. Petitioner further states he was advised that this would be a temporary situation. By October 1993, this situation remained unchanged. In the October 28, 1993 letter, Petitioner did not state that his complaint was based upon retaliation for complaining about the on-call compensation or for his problems with Chester Allsbrook.

7. On October 28, 1993, the staffing decisions were made final in a meeting with the Petitioner. In November 1993, the Complex maintenance section was disbanded and the maintenance staff were assigned to the three prison units: Caledonia, Odom and Tillery.

8. In January 1994, Petitioner spoke with Charles Creecy, the Caledonia-Odom Complex Administrator. Mr. Creecy responded to Petitioner in a memorandum dated January 26, 1994. The memorandum references the Petitioner's request to transfer to Caledonia Correctional Institution and how Mr. Creecy and Superintendent Lee at Caledonia attempted to work this transfer out for Petitioner. However, no one at Caledonia wanted to transfer to Tillery but if a position came open, they would be willing to transfer him there. At this January meeting, Petitioner's concern over on-call compensation was raised and forwarded to Nathan Rice. (Petitioner's Exhibit to Petitioner's Response to Respondent's Motion to Dismiss).

9. On February 21, 1994, Petitioner had a meeting with Nathan Rice, the Institution Commander, who advised Petitioner his claims were not timely and were meritless. Nathan Rice did not issue a written decision. At this meeting, Petitioner raised new issues regarding the misuse of State property by other employees, i.e., the loaning of a generator to a contractor and making deer stands on work time. Some of these allegations were 15 years old. Petitioner at this time asked to be considered a "whistleblower" and he did not want to be retaliated against for making these claims. Nathan Rice forwarded a lengthy memorandum to Mr. Joseph Hamilton on March 1, 1994 regarding the meeting. Following this meeting, Petitioner took no further action with the Respondent regarding his claims.

10. In July or August 1994, Petitioner hired an attorney, not the attorney of record, who attended a meeting with the new Institution Commander, Gary Dixon, to discuss Petitioner's claims. Following this meeting, Petitioner took no action regarding his claims.

11. On December 12, 1994, Petitioner wrote to Ms. Carol Hinnant in the Personnel Office of the Department of Correction and stated that he had formally grieved: 1) the denial of on-call compensation and 2) the lack of staff necessary to do his job at Tillery with his Institution Head and with the Command Manager without any satisfaction. Petitioner states in the letter that the first time that he raised the issue about receiving on-call compensation was in January 1994 when he spoke to Charles Creecy about the inequities he saw in the reassignment. Petitioner states: "I had not raised this issue previously because I feared retaliation."

12. In the December 12, 1994 letter, which was later to be treated as a Step 3 grievance, Petitioner made three requests: 1) that he be compensated for on-call time; 2) that he be provided sufficient staff at Tillery and be promoted to supervisor with back pay; and 3) that he be reimbursed for attorney fees.

13. On March 23, 1995, the Respondent's Personnel Office issued a Step 3 decision which stated that the grievance regarding the assignment to Tillery had not been made in accordance with policy and that the on-call compensation claim was untimely. However, in an attempt to provide a final explanation to Petitioner, Respondent agency set out a full response to those concerns in the decision and Petitioner was properly advised of his appeal rights.

14. Petitioner filed a petition for contested case hearing with the Office of Administrative Hearings ("OAH") on April 21, 1995 and properly served the Respondent.

15. The petition used by the Petitioner is a form specifically for employee grievances under the State Personnel Act, G.S. Chapter 126. Petitioner checked on the form that his appeal was based upon "Retaliation" and under the category "Other (Explain)," he wrote "Failure to obey the Fair Labor Standards Act." Under the section for facts supporting the appeal, Petitioner's counsel wrote:

> "Mr. Harrell has been retaliated against, among other things, for seeking wages owed him under the FLSA. He has been injured in the terms and conditions of his employment by arbitrary decisions of the Department of Correction."

Petitioner does not state how he was retaliated against, i.e., he does not state that he was discharged, suspended, transferred, demoted from his position or reduced in pay or benefits.

16. Petitioner's complaints were about incidents which occurred prior to 1992 but he did not present any of these complaints through the internal grievance process until after his transfer to Tillery in November 1993. Petitioner's own initial letter of complaint states that he chose to go to Tillery. After this letter and following his transfer to Tillery, the exhibits show that Petitioner's primary concern centered around the fact that no other maintenance staff were placed at Tillery as promised and that he was not made supervisor. During 1994, Petitioner began to formulate that he had been transferred in retaliation for the early problems he had while at the Caledonia-Odom Complex. The December 12, 1994 letter constituting the Step 3 grievance asked for on-call compensation and a promotion and maintenance staff at Tillery. These complaints are non-disciplinary and non-discriminatory.

17. In the fall of 1992, the Respondent's internal grievance procedure for non-disciplinary, non-discriminatory problems arising from employment required that the Petitioner first discuss his problem with his supervisor within fifteen days of the problem. The supervisor is to provide a written response. For a Step 2 grievance, the employee who is not satisfied must then request the next level of management to consider the problem within fifteen days after he received an unsatisfactory answer or within fifteen days after expiration of the time he was to receive an answer. Step 3 of the grievance process requires the dissatisfied employee to submit his grievance in writing within fifteen days after he gets the Step 2 decision or within fifteen days after the allotted time should no answer be given. During this process, neither employer nor employee is to have an attorney present. Petitioner first met with Charles Creecy in January 1994. He also wrote to Nathan Rice in October 1993. He then met with Nathan Rice, the Institution Commander, on February 21, 1994. The next meeting was held in August 1994 between Petitioner's attorney at the time and Gary Dixon, the new Institution Commander. Ultimately, on December 12, 1994, Petitioner filed the Step 3 grievance. Petitioner did not follow the internal grievance process in accordance with agency policy nor did he follow the procedure in a timely manner.

Based upon these uncontroverted facts, the undersigned makes the following:

CONCLUSIONS OF LAW

I. Rule 12(B)(6) Motion Converted to Summary Judgment.

A motion to dismiss for failure to state a claim is allowed where the claimant is entitled to no relief under any statement of facts which could be proven. This will occur when: 1) there is a lack of law to support the claim; 2) there is an absence of facts sufficient to make a good claim; or 3) the disclosure of some fact necessarily defeats the claim. Garvin v. City of Fayetteville, 102 N.C.App. 121, 401 S.E.2d 133 (1991). Arguably, the limited facts stated in the petition meet this criteria and the petition could be dismissed pursuant to G.S. 1A-1, Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

However, under the doctrine of "notice" pleading and having reviewed the facts stated in the form petition in the light most favorable to the non-moving party, and primarily because the exhibits and affidavits which were submitted by the parties were considered by the undersigned, Respondent's Motion to Dismiss based upon a failure to state a claim is converted into a motion for summary judgment pursuant to G.S. 1A-1, Rule 12(b). After reviewing the affidavits and exhibits of the parties, the undersigned concludes that there are no genuine issues of material fact and therefore, summary judgment is proper.

II. Personal and Subject Matter Jurisdiction.

A. General

1. The Department of Corrections is expressly exempt from the contested case provisions of G.S. Chapter 150B, the Administrative Procedures Act ("APA"). G.S. 150B-1(e)(7). Therefore, "under the plain meaning of the NCAPA, Petitioner is entitled to an administrative hearing to appeal his grievance to the OAH only by virtue of another statute." Empire Power Co. v. N. C. Dep't of Env't. Health and Natural Resources, 337 N.C. 569, 579, 447 S.E.2d 768, 774 (1994). The State Personnel Act, G.S. Chapter 126 of the North Carolina General Statutes, gives State employees the right to an administrative hearing in OAH for actions arising under Chapter 126. Specifically, G.S. 126-37(a) provides:

> "[a]ppeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative hearings as provided in Article 3 of Chapter 150B. . . ."

G.S. 150B-37(a). Therefore, unless Petitioner's employment grievances arise under Chapter 126, OAH does not have jurisdiction to hear them. Batten v. N.C. Dep't of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990); see also, Nailing v. UNC-CH, 117 N.C.App. 318, 451 S.E.2d 351 (1994).

2. Also, if Petitioner's grievance does not allege discrimination, then he must have complied with G.S. 126-34 which requires all permanent state employees having a grievance arising out of their employment to have first discussed their problem with their supervisor, then to follow the grievance procedure established by their department. G.S. 126-37(a) & 34; Batten, supra at 343.

3. OAH has personal jurisdiction over the Respondent pursuant to G.S. 1A-1, Rule 12(b)(2) of the North Carolina Rules of Civil Procedure. The Petitioner properly named and properly served the Respondent department.

B. Fair Labor Standards Act.

Petitioner's claim for reimbursement for on-call compensation pursuant to the Fair Labor Standards Act is not a cognizable claim under G.S. Chapter 126, the State Personnel Act. Therefore, OAH lacks subject matter jurisdiction to hear this claim.

C. Failure to Post Job Vacancy.

Petitioner raises for the first time in his prehearing statement a claim of failure to post a job vacancy pursuant to G.S. 126-7.1(a). Although G.S. 126-36.2 permits a direct appeal to the State Personnel Commission without having to go through the Respondent's internal grievance procedure, Petitioner is still required to follow the other procedural requirements of Chapter 126 such as filing the petition within thirty days after receipt of notice of "the decision or action which triggers the right of appeal." G.S. 126-38; Nailing v. UNC-CH, supra. Petitioner was notified of the final staffing

decisions for the dismantling of the Caledonia-Odom Complex on October 28, 1993. Petitioner also failed to state any facts in support of this claim in the filed petition and therefore, this claim should be dismissed for failure to state a claim and for lack of subject matter jurisdiction because this action was not commenced within thirty days of the action which triggered the right of appeal. G.S. 1A-1, Rule 12(b)(1) & (6); G.S. 150B-23; G.S. 126-38; Nailing v. UNC-CH, supra.

D. Retaliation and "Any Other Contested Case" Claims.

1. Retaliation Based Upon Discrimination.

Petitioner's claim that he was transferred to Tillery Correctional Institution in retaliation for complaining about the on-call compensation as well as improper activities by other employees and for his problems with a fellow employee is not a claim pursuant to G.S. 126-36 even though Petitioner contends that he was denied a position of supervisor because no staff was provided to him. Petitioner has not alleged discrimination.

2. Disciplinary Retaliation.

Nor has Petitioner made an allegation that he has been discharged, suspended or demoted for disciplinary reasons pursuant to G.S. 126-35(a). Nor has he been reduced in pay or position or been involuntarily separated. G.S. 126-35(b)-(c). Although a lateral transfer could be seen as disciplinary retaliation in some factual situations, see, e.g., Jones v. Elizabeth City, 840 F.Supp. 398 (1991) (citing other cases with adverse job actions with no reduction in pay or benefits), Petitioner in this case states that he chose to go to Tillery. Also as stated below, he has failed to timely follow the internal grievance procedure as required by G.S. 126-34.

3. "Any Other Contested Case."

The question of whether Petitioner's appeal is a "contested case" arising under Chapter 126 depends upon whether or not he has stated grounds recognized in the Act as meriting review under the "any other contested case" provision of G.S. 126-37(a). Batten, supra at 345. Although Respondent contends that the decision to transfer Petitioner to Tillery was a management decision regarding a reallocation of the Caledonia-Odom Complex maintenance staff, there still may be, and the Petitioner so contends there are, personnel matters which may necessarily be a consequence of the management decision. N.C. Dep't of Justice v. Eaker, 90 N.C.App. 30, 33, 367 S.E.2d 392, disc.rev.denied, 322 N.C. 836, 371 S.E.2d 279 (1988). Petitioner also contends that he has a right to be reimbursed for on-call compensation pursuant to State personnel regulations.

G.S. 126-4(2) and G.S. 126-4(6) provide that the State Personnel Commission shall establish rules governing compensation plans as well as the transfer of employees. The Commission has adopted rules relating to transfers in 25 NCAC 1D .0900 and rules relating to on-call compensation in 25 NCAC 1D .1934. Commission rules are to have the force and effect of law and G.S. 126-37(a), under the "any other contested case arising under this Chapter" provision, provides that jurisdiction for such matters shall be in OAH. N.C. Dep't of Justice v. Eaker, supra at 38-40 (rev'd in Batten, supra at 343 only on Eaker's holding that G.S. 126-34 provided grounds for jurisdiction in OAH independently of G.S. 126-37). Therefore, rules and regulations of the State Personnel Commission adopted pursuant to G.S. 126-4 can be enforced under the "any other contested case" provision of G.S. 126-37(a).

4. Failure to Follow Internal Grievance Procedure.

However, in this case, Petitioner failed to follow the internal grievance procedure as required by G.S. 126-37(a) and G.S. 126-34. As to the claim for reimbursement of on-call compensation, this was first addressed in a meeting with Charles Creecy in 1994 and the last incident giving rise to the claim occurred in the fall of 1992. Even if the Petitioner had complained in 1992, he did not follow through with the complaint and make it a formal grievance in a timely manner. Throughout the exhibits and the March 23, 1995 decision letter, the Respondent asserted that this claim was untimely even though the Respondent addressed this issue fully in its March 23, 1995 letter. The Respondent should not be penalized for attempting once again to try to explain their position to the Petitioner. Therefore, this claim for reimbursement of on-call compensation pursuant to Personnel rules should be dismissed for lack of subject matter jurisdiction. Lewis v. N.C. Dep't of Human Resources, 92 N.C.App. 737, 375 S.E.2d 712 (1989) (agency discretion to insist on timeliness when exercised in good faith and in accordance with law).

As to the claim of retaliation, even if it was determined that Petitioner had established a justiciable

claim of disciplinary retaliation based upon his job transfer, from the time of his original complaint in October 1993 to December 12, 1994, Petitioner did not follow through in a timely manner with his grievance even after hiring counsel. Arguably, Respondent agency also did not follow its own policies and procedures because it did not send Petitioner a written letter following the January and February 1994 meetings; however, in both meetings, Petitioner was advised that his claims had no merit and were not timely. The internal grievance procedure provides that the Petitioner must take certain steps even if he has not received a response from the employer. The Respondent's failure to follow its own internal grievance process:

> does not automatically entitle petitioner to a reversal of the dismissal determination. In order to claim relief based on a violation of the internal appeal procedures, petitioner must show that there was a substantial chance there would have been a different result in his case if the established internal procedures had been followed.

Leiphart v. N.C. School of the Arts, 80 N.C.App. 339, 353, 342 S.E.2d 914, cert. denied, 318 N.C. 507, 349 S.E.2d 862 (1986) (distinguished in Eaker, supra at 37 in that the rule in question was a State Personnel rule and not the agency's internal grievance procedure).

The result in this case would not have been different primarily because the Petitioner stated in his own exhibits that he chose to go to Tillery. His primary complaint is that after being assigned to Tillery, he was not provided with a staff to supervise and therefore, was not provided with a supervisory position. Assuming promises were made to Petitioner by his supervisor, these were matters out of his immediate supervisor's control. Positions had to be created by the legislature and job classifications are changed by the Office of State Personnel. If such promises or incentives to transfer were made, such a promise is not enforceable without approval of the legislature or the State Personnel Director. See Opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, 57 N.C.A.G. 66 (1987). While this may seem unfair, failure to add additional maintenance staff and to promote to supervisor when no position was available are not matters that are grievable under Chapter 126.

5. "Whistleblower Statute."

Article 14 of the State Personnel Act is commonly known as the "Whistleblower" Statute. G.S. 126-85 provides that no department shall retaliate against an employee for reporting verbally or in writing activities by a State agency or employee which constitute, among other things, misappropriation of State resources. G.S. 126-84 & 85. The department cannot discharge, threaten or otherwise discriminate against the employee regarding the employee's compensation, terms, conditions, location or privileges of employment. G.S. 126-85(a).

Although "any other contested case arising under this Chapter" shall be heard in OAH in accordance with G.S. 126-37(a), a specific avenue for appeal for redress of this grievance is provided in Article 14. A State employee injured by a violation of G.S. 126-85 may maintain an action in superior court within one year after the occurrence of the alleged violation. G.S. 126-86. When two statutes deal with common subject matter, in this case employee grievances under the State Personnel Act, they should be read together and harmonized if possible; however, if there is any conflict between the two provisions, the specific statute shall prevail over the general statute unless it appears that the legislature intended to make the general act controlling. Batten v. N.C. Dep't of Correction, supra at 344. A claim of retaliation under the Whistleblower Statute must be brought in superior court and not in OAH. Therefore, Petitioner's claim of retaliation for complaining about improper or illegal misappropriation of State resources by other employees must be dismissed for lack of subject matter jurisdiction.

III. Motion to Amend Petition.

During the hearing on the motion to dismiss, Petitioner's counsel made a motion to amend the petition to assert the claims of 1) reimbursement of on-call compensation pursuant to Personnel rules and regulations; and 2) failure to post job vacancy. This motion was denied because these were issues based upon facts of which the Petitioner was aware prior to the filing of his petition and he chose not to raise these issues in his petition. However, because the issues were addressed in the memoranda of law and at the hearing and because G.S. 1A-1, Rule 15(b) requires amendment when the presentation of the merits of the action will be preserved thereby, the undersigned has addressed these issues in this decision. The result of the decision is not changed whether the petition is amended or not.

Based upon the foregoing uncontroverted facts and conclusions of law, the undersigned makes the following:

RECOMMENDED DECISION

The Respondent's Motion to Dismiss Petitioner's petition for a contested case hearing based upon a lack of subject matter jurisdiction and upon a failure to state a claim is converted to a motion for summary judgment pursuant to G.S. 1A-1, Rules 12(b) and 56 and is hereby **GRANTED**.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447, in accordance with G.S. 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a). The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 5th day of September, 1995.

Meg Scott Phipps
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural	Hearing Aid Dealers and Fitters	22
	Resources	Landscape Architects	26
16	Public Education	Landscape Contractors	28
17	Revenue	Marital and Family Therapy	31
18	Secretary of State	Medical Examiners	32
19A	Transportation	Midwifery Joint Committee	33
20	Treasurer	Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
ACUPUNCTURE LICENSING BOARD						
21 NCAC 01 .0101	10:02 NCR 150	07/01/95			08/01/95	
.0201	10:07 NCR 585	10/01/95				
.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
AGRICULTURE						
2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
ARCHITECTURE						
21 NCAC 02 .0208	10:12 NCR 985	12/01/95				
02 .0301 - .0302	10:10 NCR 829	07/01/96				
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS						
21 NCAC 08F .0105	10:04 NCR 255	08/01/95			08/01/95	
.0113	10:04 NCR 255	08/01/95			08/01/95	
08G .0401	10:04 NCR 255	08/01/95			08/01/95	
08J .0005	10:04 NCR 255	08/01/95			08/01/95	
.0008	10:04 NCR 255	08/01/95			08/01/95	
08M .0102	10:04 NCR 255	08/01/95			N/A	RRC Obj./Rule Withdrawn
.0104	10:04 NCR 255	08/01/95			08/01/95	
.0306	10:04 NCR 255	08/01/95			08/01/95	
.0401	10:04 NCR 255	08/01/95			08/01/95	
08N .0203	10:04 NCR 255	08/01/95			08/01/95	
.0302	10:04 NCR 255	08/01/95			08/01/95	
.0307	10:04 NCR 255	08/01/95			08/01/95	
CHIROPRACTIC EXAMINERS						
21 NCAC 10 .0203	10:04 NCR 261	08/01/95			08/01/95	
COMMUNITY COLLEGES						
23 NCAC 02C .0108	10:03 NCR 208	09/01/95				
.0210	10:07 NCR 587	01/01/96				
.0211	10:03 NCR 208	09/01/95				
.0301	10:07 NCR 587	01/01/96				
.0306	10:03 NCR 208	09/01/95				
02E .0403	10:07 NCR 587	01/01/96				
COMMERCE						
4 NCAC 06C .0203	10:05 NCR 300	09/01/95				
CORRECTION						
5 NCAC 05 .0001	10:01 NCR 12	07/01/95			07/01/95	
COSMETIC ART EXAMINERS						
21 NCAC 14B .0604	10:12 NCR 985	12/01/95				
CULTURAL RESOURCES						
7 NCAC 02F .0002	10:01 NCR 12	07/01/95			08/01/95	
ELECTROLYSIS EXAMINERS						
21 NCAC 19 .0104	10:11 NCR 907	12/01/95				
.0204	10:11 NCR 907	12/01/95				
.0616	10:11 NCR 907	12/01/95				
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES						
15A NCAC 02B .0101	10:01 NCR 13					Correction to Notice
.0104	10:01 NCR 13					Correction to Notice
.0202	10:01 NCR 13					Correction to Notice
.0211	10:01 NCR 13					Correction to Notice

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		.0301	10:01 NCR 13					Correction to Notice
		.0303	10:08 NCR 661	11/01/95				
		.0304	10:04 NCR 246	01/01/96				
		.0304	10:05 NCR 301	11/01/95			11/01/95	
		.0308 - .0310	10:08 NCR 661	11/01/95				
		.0308	10:08 NCR 661	02/01/96				
		.0313	10:11 NCR 901	02/01/96				
		.0315 - .0316	10:08 NCR 661	11/01/95				
		.0315	10:08 NCR 661	02/01/96				
		.0316	10:04 NCR 246	01/01/96				
	02D	.0520	10:01 NCR 13	07/01/95	x	x		
		.0531	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0902	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0909	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0952	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.1402	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.1406	10:01 NCR 13	07/01/95	x	x		
		.1409	10:01 NCR 13	07/01/95	x	x		
		.1701 - .1702	10:01 NCR 13	07/01/95	x	x		
		.1801 - .1803	10:01 NCR 13	07/01/95	x	x		
NPDES Permit			10:02 NCR 56					
	04A	.0001	10:07 NCR 579	10/01/95				
		.0005	10:07 NCR 579	10/01/95				
	04B	.0016	10:07 NCR 579	10/01/95				
		.0020	10:07 NCR 579	10/01/95				
		.0028	10:02 NCR 149	07/01/95			08/01/95	
		.0029 - .0030	10:07 NCR 579	10/01/95				
	04C	.0007 - .0008	10:07 NCR 579	10/01/95				
		.0010	10:07 NCR 579	10/01/95				
	04D	.0002 -.0003	10:07 NCR 579	10/01/95				
	07B	.0101	10:09 NCR 751	12/01/95	x	x		
		.0201 - .0216	10:09 NCR 751	12/01/95	x	x		
		.0401 - .0406	10:09 NCR 751	12/01/95	x	x		
		.0501 - .0507	10:09 NCR 751	12/01/95	x	x		
	07H	.0208	10:03 NCR 197	12/01/95				
		.0308	10:09 NCR 751	12/01/95				
		.0309 - .0310	10:09 NCR 751	02/01/96				
		.1705	10:09 NCR 751	12/01/95				
		.2201 - .2202	10:03 NCR 204	12/01/95				
		.2203	10:03 NCR 204	12/01/95	x			
		.2204 - .2205	10:03 NCR 204	12/01/95				
	07K	.0103	10:09 NCR 751	12/01/95				
	10B	.0115	10:06 NCR 338	10/01/95				
		.0202 - .0203	10:01 NCR 26	07/01/95			07/01/95	
		.0202	10:04 NCR 249	08/01/95			09/01/95	
		.0214	10:01 NCR 26	07/01/95			07/01/95	
	10C	.0404	10:06 NCR 338	12/01/95				
		.0407	10:06 NCR 338	12/01/95				
	10D	.0002 - .0003	10:01 NCR 26	07/01/95			07/01/95	
		.0003	10:04 NCR 250	08/01/95			09/01/95	
		.0003	10:06 NCR 338	09.01/95				
	10F	.0313	10:06 NCR 338	10/01/95			10/01/95	
		.0317	10:01 NCR 26	07/01/95			07/01/95	
		.0323 - .0324	10:11 NCR 904	12/01/95				
		.0339	10:13 NCR 1159	02/01/96				
		.0360	10:13 NCR 1159	02/01/96				
	10K	.0003	10:13 NCR 1159	02/01/96				
Wildlife Proclamation/Striped Bass			10:02 NCR 57	04/10/95				
			10:03 NCR 195	04/15/95				
	13A	.0006	10:13 NCR 1160	01/01/96				
		.0019	10:13 NCR 1160	01/01/96				
	13B	.0101	10:06 NCR 350	10/01/95				
		.0103	10:06 NCR 350	10/01/95				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
	.0503	10:06 NCR 350	10/01/95				
	.0802 - 0829	10:06 NCR 350	10/01/95				
	.1627	10:06 NCR 350	10/01/95				Agency Did Not Adopt
16A	.1001	10:07 NCR 582	01/01/96	x			
	.1002 - .1006	10:07 NCR 582	01/01/96				
18A	.1801 - .1814	10:13 NCR 1160	01/01/96				
	.1818	10:13 NCR 1160	01/01/96				
	.2508	10:06 NCR 350	01/01/96				
	.2511	10:06 NCR 350	01/01/96				
	.2516 - .2519	10:06 NCR 350	01/01/96				
	.2521 - .2524	10:06 NCR 350	01/01/96				
	.2526	10:06 NCR 350	01/01/96				
	.2528 - .2535	10:06 NCR 350	01/01/96				
	.2537	10:06 NCR 350	01/01/96				
	.2540 - .2542	10:06 NCR 350	01/01/96				
	.2543	10:06 NCR 350	01/01/96				Agency Did Not Adopt
	.2601 - .2602	10:13 NCR 1160	01/01/96				
	.2618	10:13 NCR 1160	01/01/96				
	.2624	10:13 NCR 1160	01/01/96				
	.2632	10:13 NCR 1160	01/01/96				
	.2635 - .2636	10:13 NCR 1160	01/01/96				
19A	.0401	10:06 NCR 350	10/01/95				
	.0406	10:06 NCR 350	10/01/95				
	.0502	10:06 NCR 350	10/01/95				
19C	.0206	10:05 NCR 305	10/01/95	x			
19H	.0702	10:07 NCR 582	10/01/95	x			
20D	.0233 - .0234	10:13 NCR 1160	01/01/96				
	.0236	10:13 NCR 1160	01/01/96				
	.0241 - .0243	10:13 NCR 1160	01/01/96				
	.0247 - .0252	10:13 NCR 1160	01/01/96				
21F	.0801 - .0802	10:13 NCR 1160	01/01/96				
	.0804	10:13 NCR 1160	01/01/96				
	.1101 - .1103	10:13 NCR 1160	01/01/96				
	.1105	10:13 NCR 1160	01/01/96				
24A	.0102	10:13 NCR 1160	01/01/96				
	.0202 - .0204	10:13 NCR 1160	01/01/96				
	.0301	10:13 NCR 1160	01/01/95				
	.0404	10:06 NCR 350	10/01/95	x			

FINAL DECISION LETTERS

Voting Rights Act		10:01 NCR 02					
		10:03 NCR 194					
		10:05 NCR 298					
		10:10 NCR 825					
		10:11 NCR 889					
		10:13 NCR 1084					

GENERAL CONTRACTORS LICENSING BOARD

21 NCAC 12	.0302	10:11 NCR 906	12/01/95				
	.0410	10.11 NCR 906	12/01/95				

GENERAL STATUTES

Chapter 150B		10:13 NCR 1062					

GOVERNOR'S EXECUTIVE ORDERS

Number 72		10:01 NCR 01				03/06/95	
Number 73		10:02 NCR 54				03/15/95	
Number 74		10:02 NCR 54				03/27/95	
Number 75		10:03 NCR 191				03/30/95	
Number 76		10:03 NCR 191				04/03/95	
Number 77		10:05 NCR 297				05/02/95	
Number 78		10:06 NCR 336				05/23/95	

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
Number 79	10:07 NCR 427				06/07/95	
Number 80	10:07 NCR 427				06/13/95	
Number 81	10:08 NCR 639				06/27/95	
Number 82	10:10 NCR 823				07/27/95	
Number 83	10:10 NCR 823				08/03/95	
Number 84	10:12 NCR 981				08/24/95	
Number 85	10:13 NCR 1061				09/12/95	
Number 86	10:13 NCR 1061				09/12/95	
HUMAN RESOURCES						
10 NCAC 03D .1401	10:08 NCR 641	11/01/95				
03H .0108 - .0109	10:02 NCR 58	09/01/95				
.0206 - .0220	10:02 NCR 58	09/01/95				
.0306 - .0318	10:02 NCR 58	09/01/95				
.0407 - .0409	10:02 NCR 58	09/01/95				
.0505 - .0507	10:02 NCR 58	09/01/95				
.0510 - .0517	10:02 NCR 58	09/01/95				
.0605 - .0609	10:02 NCR 58	09/01/95				
.0705 - .0712	10:02 NCR 58	09/01/95				
.0810 - .0812	10:02 NCR 58	09/01/95				
.0903 - .0911	10:02 NCR 58	09/01/95				
.1003 - .1008	10:02 NCR 58	09/01/95				
.1105 - .1109	10:02 NCR 58	09/01/95				
.1130 - .1136	10:02 NCR 58	09/01/95				
.1150 - .1163	10:02 NCR 58	09/01/95				
.1204 - .1208	10:02 NCR 58	09/01/95				
.1210	10:02 NCR 58	09/01/95				
.1306 - .1308	10:02 NCR 58	09/01/95				
.1405 - .1406	10:02 NCR 58	09/01/95				
.1408 - .1410	10:02 NCR 58	09/01/95				
.1501 - .1503	10:02 NCR 58	09/01/95				
.1612 - .1613	10:02 NCR 58	09/01/95				
.1703 - .1704	10:02 NCR 58	09/01/95				
.1804 - .1807	10:02 NCR 58	09/01/95				
.2001	10:02 NCR 58	09/01/95				
.2101 - .2110	10:02 NCR 58	09/01/95				
.2201 - .2212	10:02 NCR 58	09/01/95				
.2301 - .2308	10:02 NCR 58	09/01/95				
.2401 - .2402	10:02 NCR 58	09/01/95				
.2501 - .2506	10:02 NCR 58	09/01/95				
.2601 - .2607	10:02 NCR 58	09/01/95				
.2701	10:02 NCR 58	09/01/95				
.2801 - .2802	10:02 NCR 58	09/01/95				
.2901 - .2902	10:02 NCR 58	09/01/95				
.3001 - .3005	10:02 NCR 58	09/01/95				
.3011 - .3016	10:02 NCR 58	09/01/95				
.3021 - .3032	10:02 NCR 58	09/01/95				
.3101 - .3104	10:02 NCR 58	09/01/95				
.3201 - .3202	10:02 NCR 58	09/01/95				
.3301 - .3302	10:02 NCR 58	09/01/95				
.3401 - .3404	10:02 NCR 58	09/01/95				
03L .0901 - .0907	10:08 NCR 641	02/01/96				
.1001 - .1007	10:08 NCR 641	02/01/96				
.1101 - .1112	10:08 NCR 641	02/01/96				
.1201 - .1202	10:08 NCR 641	02/01/96				
.1301 - .1303	10:08 NCR 641	02/01/96				
.1401 - .1402	10:08 NCR 641	02/01/96				
03M .0202 - .0205	10:08 NCR 641	02/01/96				
.0207	10:08 NCR 641	02/01/96				
14B .0501 - .0503	10:07 NCR 430	05/01/96				
.0505 - .0509	10:07 NCR 430	05/01/96				
14K .0101 - .0103	10:07 NCR 430	05/01/96				
.0201 - .0219	10:07 NCR 430	05/01/96				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
				State	Local		
	.0301 - .0310	10:07 NCR 430	05/01/96				
	.0312 - .0315	10:07 NCR 430	05/01/96				
	.0317 - .0324	10:07 NCR 430	05/01/96				
	.0326 - .0329	10:07 NCR 430	05/01/96				
	.0333 - .0348	10:07 NCR 430	05/01/96				
	.0350 - .0365	10:07 NCR 430	05/01/96				
	.0401 - .0408	10:07 NCR 430	05/01/96				
14L	.0101 - .0106	10:07 NCR 430	05/01/96				
	.0201 - .0203	10:07 NCR 430	05/01/96				
	.0301 - .0308	10:07 NCR 430	05/01/96				
	.0310	10:07 NCR 430	05/01/96				
	.0401 - .0407	10:07 NCR 430	05/01/96				
	.0601 - .0606	10:07 NCR 430	05/01/96				
	.0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0701 - .0709	10:07 NCR 430	05/01/96				
	.0711 - .0712	10:07 NCR 430	05/01/96				
14M	.0101 - .0113	10:07 NCR 430	05/01/96				
	.0501 - .0511	10:07 NCR 430	05/01/96				
	.0601 - .0602	10:07 NCR 430	05/01/96				
	.0604	10:07 NCR 430	05/01/96				
	.0606	10:07 NCR 430	05/01/96				
	.0608 - .0612	10:07 NCR 430	05/01/96				
	.0614 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0621	10:07 NCR 430	05/01/96				
	.0701 - .0716	10:07 NCR 430	05/01/96				
14N	.0101 - .0107	10:07 NCR 430	05/01/96				
	.0201 - .0207	10:07 NCR 430	05/01/96				
	.0301 - .0307	10:07 NCR 430	05/01/96				
	.0401 - .0406	10:07 NCR 430	05/01/96				
	.0501 - .0507	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0705	10:07 NCR 430	05/01/96				
	.0801 - .0811	10:07 NCR 430	05/01/96				
	.0901 - .0905	10:08 NCR 656	05/01/96				
14O	.0301 - .0314	10:07 NCR 430	05/01/96				
	.0401 - .0409	10:07 NCR 430	05/01/96				
	.0411 - .0416	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0601 - .0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0618	10:07 NCR 430	05/01/96				
	.0701 - .0710	10:07 NCR 430	05/01/96				
14V	.0101 - .0104	10:07 NCR 430	05/01/96				
	.0101 - .0104	10:13 NCR 1085	05/01/96				
	.0201 - .0208	10:07 NCR 430	05/01/96				
	.0201 - .0208	10:13 NCR 1085	05/01/96				
	.0301 - .0304	10:07 NCR 430	05/01/96				
	.0301 - .0304	10:13 NCR 1085	05/01/96				
	.0401 - .0405	10:07 NCR 430	05/01/96				
	.0401 - .0405	10:13 NCR 1085	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:13 NCR 1085	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0601 - .0607	10:13 NCR 1085	05/01/96				
	.0701 - .0712	10:07 NCR 430	05/01/96				
	.0701 - .0713	10:13 NCR 1085	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:13 NCR 1085	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:13 NCR 1085	05/01/96				
	.1201 - .1203	10:07 NCR 430	05/01/96				
	.1201 - .1203	10:13 NCR 1085	05/01/96				

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
.1301 - .1303	10:07 NCR 430	05/01/96				
.1301 - .1304	10:13 NCR 1085	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1401 - .1403	10:13 NCR 1085	05/01/96				
.1501 - .1504	10:07 NCR 430	05/01/96				
.1501 - .1504	10:13 NCR 1085	05/01/96				
.2101 - .2104	10:07 NCR 430	05/01/96				
.2101 - .2104	10:13 NCR 1085	05/01/96				
.2201 - .2204	10:07 NCR 430	05/01/96				
.2201 - .2204	10:13 NCR 1085	05/01/96				
.2301 - .2306	10:07 NCR 430	05/01/96				
.2301 - .2306	10:13 NCR 1085	05/01/96				
.2401 - .2404	10:07 NCR 430	05/01/96				
.2401 - .2404	10:13 NCR 1085	05/01/96				
.2501 - .2505	10:07 NCR 430	05/01/96				
.2501 - .2505	10:13 NCR 1085	05/01/96				
.3101 - .3103	10:07 NCR 430	05/01/96				
.3101 - .3103	10:13 NCR 1085	05/01/96				
.3201 - .3203	10:07 NCR 430	05/01/96				
.3201 - .3203	10:13 NCR 1085	05/01/96				
.3301 - .3303	10:07 NCR 430	05/01/96				
.3301 - .3303	10:13 NCR 1085	05/01/96				
.3401 - .3403	10:07 NCR 430	05/01/96				
.3401 - .3403	10:13 NCR 1085	05/01/96				
.3501 - .3503	10:07 NCR 430	05/01/96				
.3501 - .3503	10:13 NCR 1085	05/01/96				
.3601 - .3604	10:07 NCR 430	05/01/96				
.3601 - .3604	10:13 NCR 1085	05/01/96				
.3701 - .3703	10:07 NCR 430	05/01/96				
.3701 - .3703	10:13 NCR 1085	05/01/96				
.3801 - .3803	10:07 NCR 430	05/01/96				
.3801 - .3803	10:13 NCR 1085	05/01/96				
.3901 - .3903	10:07 NCR 430	05/01/96				
.3901 - .3903	10:13 NCR 1085	05/01/96				
.4001 - .4003	10:07 NCR 430	05/01/96				
.4001 - .4003	10:13 NCR 1085	05/01/96				
.4101 - .4104	10:07 NCR 430	05/01/96				
.4101 - .4104	10:13 NCR 1085	05/01/96				
.4201 - .4203	10:13 NCR 1085	05/01/96				
.5001 - .5002	10:07 NCR 430	05/01/96				
.5001 - .5003	10:13 NCR 1085	05/01/96				
.5101 - .5104	10:07 NCR 430	05/01/96				
.5101 - .5104	10:13 NCR 1085	05/01/96				
.5201 - .5204	10:07 NCR 430	05/01/96				
.5201 - .5204	10:13 NCR 1085	05/01/96				
.5301 - .5303	10:07 NCR 430	05/01/96				
.5301 - .5303	10:13 NCR 1085	05/01/96				
.5401 - .5403	10:07 NCR 430	05/01/96				
.5401 - .5403	10:13 NCR 1085	05/01/96				
.5501 - .5503	10:07 NCR 430	05/01/96				
.5501 - .5503	10:13 NCR 1085	05/01/96				
.5601 - .5603	10:07 NCR 430	05/01/96				
.5601 - .5603	10:13 NCR 1085	05/01/96				
.5701 - .5703	10:07 NCR 430	05/01/96				
.5701 - .5703	10:13 NCR 1085	05/01/96				
.5801 - .5804	10:07 NCR 430	05/01/96				
.5801 - .5804	10:13 NCR 1085	05/01/96				
.5901 - .5903	10:07 NCR 430	05/01/96				
.5901 - .5903	10:13 NCR 1085	05/01/96				
.6001 - .6003	10:07 NCR 430	05/01/96				
.6001 - .6003	10:13 NCR 1085	05/01/96				
.6101 - .6103	10:07 NCR 430	05/01/96				
.6101 - .6103	10:13 NCR 1085	05/01/96				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
				State	Local		
	.6201 - .6202	10:07 NCR 430	05/01/96				
	.6201 - .6202	10:13 NCR 1085	05/01/96				
	.6301 - .6303	10:07 NCR 430	05/01/96				
	.6301 - .6303	10:13 NCR 1085	05/01/96				
	.6401 - .6403	10:07 NCR 430	05/01/96				
	.6401 - .6403	10:13 NCR 1085	05/01/96				
	.6501 - .6503	10:07 NCR 430	05/01/96				
	.6501 - .6503	10:13 NCR 1085	05/01/96				
	.6601 - .6603	10:07 NCR 430	05/01/96				
	.6601 - .6603	10:13 NCR 1085	05/01/96				
	.6701 - .6702	10:07 NCR 430	05/01/96				
	.6701 - .6702	10:13 NCR 1085	05/01/96				
	.6801 - .6802	10:07 NCR 430	05/01/96				
	.6801 - .6802	10:13 NCR 1085	05/01/96				
	.6901 - .6903	10:07 NCR 430	05/01/96				
	.6901 - .6903	10:13 NCR 1085	05/01/96				
15A	.0115 - .0127	10:13 NCR 1085	01/01/96	x			
	.0205 - .0228	10:13 NCR 1085	01/01/96	x			
18A	.0124 - .0128	10:07 NCR 430	05/01/96				
	.0130	10:07 NCR 430	05/01/96				
	.0132 - .0133	10:07 NCR 430	05/01/96				
	.0135 - .0136	10:07 NCR 430	05/01/96				
18I	.0114 - .0120	10:07 NCR 430	05/01/96				
18J	.0110 - .0119	10:07 NCR 430	05/01/96				
	.0212 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0311	10:07 NCR 430	05/01/96				
	.0507 - .0511	10:08 NCR 656	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0701 - .0715	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.0803	10:02 NCR 118	07/01/95			07/01/95	
18K	.0109 - .0116	10:07 NCR 430	05/01/96				
	.0262 - .0263	10:08 NCR 656	05/01/96				
18L	.0107 - .0108	10:07 NCR 430	05/01/96				
	.0223 - .0224	10:07 NCR 430	05/01/96				
	.0331 - .0336	10:07 NCR 430	05/01/96				
	.0338 - .0339	10:07 NCR 430	05/01/96				
	.0428 - .0434	10:07 NCR 430	05/01/96				
	.0504	10:07 NCR 430	05/01/96				
	.0511	10:07 NCR 430	05/01/96				
	.0513	10:07 NCR 430	05/01/96				
	.0601 - .0607	10:08 NCR 656	05/01/96				
	.0701 - .0705	10:07 NCR 430	05/01/96				
	.0707	10:07 NCR 430	05/01/96				
	.0801	10:07 NCR 430	05/01/96				
	.0803 - .0809	10:07 NCR 430	05/01/96				
	.0901 - .0904	10:07 NCR 430	05/01/96				
	.1001 - .1006	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1105 - .1107	10:07 NCR 430	05/01/96				
	.1201	10:07 NCR 430	05/01/96				
	.1203 - .1206	10:07 NCR 430	05/01/96				
	.1301 - .1309	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1501 - .1525	10:07 NCR 430	05/01/96				
18M	.0107 - .0110	10:07 NCR 430	05/01/96				
	.0206 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0307	10:07 NCR 430	05/01/96				
	.0406 - .0409	10:07 NCR 430	05/01/96				
	.0505 - .0506	10:07 NCR 430	05/01/96				
	.0607 - .0608	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0706	10:07 NCR 430	05/01/96				

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		.0708 - .0714	10:07 NCR 430	05/01/96				
		.0801 - .0803	10:07 NCR 430	05/01/96				
		.0817 - .0819	10:07 NCR 430	05/01/96				
		.0824 - .0838	10:07 NCR 430	05/01/96				
		.0901 - .0908	10:07 NCR 430	05/01/96				
		.1001 - .1009	10:07 NCR 430	05/01/96				
		.1101 - .1106	10:07 NCR 430	05/01/96				
		.1203 - .1204	10:07 NCR 430	05/01/96				
		.1302 - .1305	10:07 NCR 430	05/01/96				
		.1401 - .1403	10:07 NCR 430	05/01/96				
		.1405 - .1410	10:07 NCR 430	05/01/96				
	18N	.0105 - .0110	10:07 NCR 430	05/01/96				
		.0204 - .0212	10:07 NCR 430	05/01/96				
		.0305 - .0306	10:07 NCR 430	05/01/96				
		.0601 - .0605	10:08 NCR 656	05/01/96				
		.0701 - .0709	10:08 NCR 656	05/01/96				
	18O	.0517 - .0524	10:08 NCR 656	05/01/96				
	18P	.0901 - .0903	10:07 NCR 430	05/01/96				
		.1001 - .1004	10:07 NCR 430	05/01/96				
	18Q	.0284	10:07 NCR 430	05/01/96				
		.0286 - .0287	10:07 NCR 430	05/01/96				
		.0520 - .0521	10:07 NCR 430	05/01/96				
		.0538 - .0552	10:07 NCR 430	05/01/96				
	26B	.0110	10:08 NCR 660	10/01/95				
		.0124	10:02 NCR 118	07/01/95	x		07/01/95	
	26G	.0703 - .0705	10:12 NCR 982	12/01/95				
	26H	.0212 - .0213	10:13 NCR 1153	01/01/96	x			
		.0213	10:02 NCR 118	07/01/95			07/01/95	
		.0302	10:04 NCR 228	08/01/95	x		08/01/95	
		.0304 - .0305	10:04 NCR 228	08/01/95	x		08/01/95	
		.0308 - .0309	10:04 NCR 228	08/01/95	x		08/01/95	
		.0508	10:12 NCR 982	12/01/95				
	261	.0101 - .0107	10:10 NCR 826	11/01/95				
	39D	.0302 - .0303	10:09 NCR 722	11/01/95				
	41F	.0706	10:03 NCR 196	08/01/95			08/01/95	
		.0812	10:03 NCR 196	08/01/95			08/01/95	
	42B	.1209	10:13 NCR 1158	01/01/96				
	42C	.2010	10:13 NCR 1158	01/01/96				
	42D	.1409	10:13 NCR 1158	01/01/96				
	42H	.0911	10:09 NCR 722	12/01/95				
	42W	.0001 - .0002	10:10 NCR 828	11/01/95				
INSURANCE								
11 NCAC	06A	.0812	10:04 NCR 246	08/01/95			08/01/95	
	16	.0704	10:11 NCR 900	12/01/95				
JUSTICE								
12 NCAC	04E	.0104	10:07 NCR 573	10/01/95				
	07D	.0201	10:07 NCR 575	10/01/95				
		.0204	10:11 NCR 900	12/01/95				
		.0301	10:07 NCR 575	10/01/95				
		.0401	10:07 NCR 575	10/01/95				
		.0701	10:07 NCR 575	10/01/95				
		.0706	10:07 NCR 575	10/01/95				
		.0801	10:07 NCR 575	10/01/95				
		.0806	10:07 NCR 575	10/01/95				
		.0902	10:07 NCR 575	10/01/95				
		.0904	10:07 NCR 575	10/01/95				
	09A	.0204	10:02 NCR 122	08/01/95			08/01/95	
	09B	.0113	10:02 NCR 122	08/01/95			08/01/95	
		.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
		.0205	10:02 NCR 122	08/01/95				
		.0206	10:02 NCR 122	08/01/95			08/01/95	

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		.0210	10:02 NCR 122	08/01/95			08/01/95	
		.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
		.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
		.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
	09C	.0401	10:02 NCR 122	08/01/95			08/01/95	
		.0601	10:02 NCR 122	08/01/95			08/01/95	
	09D	.0102	10:02 NCR 122	08/01/95			08/01/95	
		.0104 - .0106	10:02 NCR 122	08/01/95			08/01/95	
	10B	.0102 - .0103	10:09 NCR 723	01/01/96				
		.0105	10:09 NCR 723	01/01/96				
		.0204	10:09 NCR 723	01/01/96				
		.0301	10:09 NCR 723	01/01/96				
		.0304	10:09 NCR 723	01/01/96				
		.0307	10:09 NCR 723	01/01/96				
		.0401 - .0403	10:09 NCR 723	01/01/96				
		.0405	10:09 NCR 723	01/01/96				
		.0407 - .0409	10:09 NCR 723	01/01/96				
		.0502 - .0503	10:09 NCR 723	01/01/96				
		.0505	10:09 NCR 723	01/01/96				
		.0601 - .0607	10:09 NCR 723	01/01/96				
		.0702 - .0706	10:09 NCR 723	01/01/96				
		.0801 - .0803	10:09 NCR 723	01/01/96				
		.0901	10:09 NCR 723	01/01/96				
		.0903 - .0906	10:09 NCR 723	01/01/96				
		.0908 - .0912	10:09 NCR 723	01/01/96				
		.1004 - .1005	10:09 NCR 723	01/01/96				
		.1201 - .1205	10:09 NCR 723	01/01/96				
	11	.0210	10:05 NCR 301	09/01/95				
LABOR								
13 NCAC			10:01 NCR 10	01/01/96				Notice on Subject Matter
			10:01 NCR 12	01/01/96				Notice on Subject Matter
			10:02 NCR 149	10/01/95				Notice on Subject Matter
			10:02 NCR 149	01/01/96				Notice on Subject Matter
			10:02 NCR 149	01/01/96				Notice on Subject Matter
			10:02 NCR 149	02/01/96				Notice on Subject Matter
			10:03 NCR 196	01/01/96				Notice on Subject Matter
			10:03 NCR 197	01/01/96				Notice on Subject Matter
	12	.0101	10:02 NCR 142	08/01/95				
		.0303 - .0315	10:02 NCR 142	08/01/95				
		.0501 - .0502	10:02 NCR 142	08/01/95				
		.0803 - .0808	10:02 NCR 142	08/01/95				
LIST OF RULES CODIFIED								
			10:02 NCR 167					Rules Filed 03/95
			10:04 NCR 272					Rules Filed 04/95
			10:06 NCR 392					Rules Filed 05/95
			10:09 NCR 783					Rules Filed 06/95
			10:10 NCR 845					Rules Filed 07/95
MEDICAL EXAMINERS								
21 NCAC	32B	.0901 - .0902	10:10 NCR 831	11/01/95				
	32F	.0003	10:10 NCR 831	11/01/95				
	32H	.0102	10:02 NCR 151	07/01/96			07/01/96	
		.0201	10:02 NCR 151	07/01/96			07/01/96	
		.0203	10:02 NCR 151	07/01/96				
		.0408	10:02 NCR 151	07/01/96			07/01/96	
		.0506	10:02 NCR 151	07/01/96				
		.0601	10:02 NCR 151	07/01/95			09/01/95	
		.0602	10:02 NCR 151	07/01/96			07/01/96	
		.0801	10:02 NCR 151	07/01/96			07/01/96	
		.1001	10:02 NCR 151	07/01/96			07/01/96	
	32I	.0003 - .0004	10:02 NCR 151	07/01/95			09/01/95	

Agency/Rule Citation				Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		32M	.0001 - .0002	10:10 NCR 831	11/01/95				
MORTUARY SCIENCE									
21	NCAC	34B	.0401	10:13 NCR 1182	01/01/96				
		34D	.0202	10:13 NCR 1182	01/01/96				
			.0301	10:13 NCR 1182	01/01/96				
NURSING, BOARD OF									
21	NCAC	36	.0109	10:11 NCR 908	01/01/96				
			.0202 - .0203	10:11 NCR 908	01/01/96				
			.0209	10:11 NCR 908	01/01/96				
			.0211	10:11 NCR 908	01/01/96				
			.0216 - .0219	10:11 NCR 908	01/01/96				
			.0221	10:11 NCR 908	01/01/96				
			.0225	10:11 NCR 908	01/01/96				
			.0227	10:11 NCR 908	01/01/96				
			.0318	10:11 NCR 908	01/01/96				
			.0320	10:11 NCR 908	01/01/96				
			.0322	10:11 NCR 908	01/01/96				
			.0401 - .0405	10:10 NCR 839	12/01/95				
NURSING HOME ADMINISTRATORS									
21	NCAC	37	.0101	10:04 NCR 262	08/01/95			08/01/95	
			.0302	10:03 NCR 206	08/01/95				
			.0404	10:03 NCR 206	08/01/95				
			.0502	10:03 NCR 206	08/01/95			08/01/95	
			.0603	10:03 NCR 206	08/01/95			08/01/95	
			.0904	10:04 NCR 262	08/01/95				
			.0912	10:03 NCR 206	08/01/95			08/01/95	
			.0914	10:03 NCR 206	08/01/95				
PHYSICAL THERAPY EXAMINERS									
21	NCAC	48C	.0103	10:08 NCR 671	10/01/95				
		48D	.0006	10:08 NCR 671	10/01/95				
			.0008	10:08 NCR 671	10/01/95				
			.0011	10:08 NCR 671	10/01/95				
		48E	.0110	10:08 NCR 671	10/01/95				
		48F	.0002	10:08 NCR 671	10/01/95				
		48G	.0501 - .0516	10:08 NCR 671	10/01/95				
			.0601	10:08 NCR 671	10/01/95				
		48H	.0104	10:08 NCR 671	10/01/95				
			.0701 - .0704	10:08 NCR 671	10/01/95				
PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS									
21	NCAC	50	.0402	10:01 NCR 39	09/01/95			09/01/95	
			.0505	10:01 NCR 39	09/01/95				Agency Did Not Adopt
PROFESSIONAL COUNSELORS									
21	NCAC	53	.0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
			.0301	10:01 NCR 40	07/01/95			07/01/95	
			.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
			.0310	10:01 NCR 40	07/01/95				
			.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
			.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PROFESSIONAL ENGINEERS AND LAND SURVEYORS									
21	NCAC	56	.0802	10:11 NCR 934	12/01/95				
			.0804	10:11 NCR 934	12/01/95				
			.0902	10:11 NCR 934	12/01/95				
			.1103	10:11 NCR 934	12/01/95				
			.1301	10:11 NCR 934	12/01/95				
			.1602	10:11 NCR 934	12/01/95				

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
.1604	10:11 NCR 934	12/01/95				
.1608	10:11 NCR 934	12/01/95				
.1707	10:11 NCR 934	12/01/95				
.1712 - .1713	10:11 NCR 934	12/01/95				
PSYCHOLOGY BOARD						
21 NCAC 54 .1701	10:11 NCR 929	12/01/95				
.1707	10:11 NCR 929	12/01/95				
.2704 - .2706	10:11 NCR 929	12/01/95				
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	
REFRIGERATION EXAMINERS						
21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	
.1102	10:04 NCR 264	08/01/95			08/01/95	
.1103	10:09 NCR 781	11/01/95				
REVENUE						
Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					
Tax Review Board	10:11 NCR 890					
SECRETARY OF STATE						
18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
.1402	10:11 NCR 906	12/01/95				
SOCIAL WORK, BOARD OF						
21 NCAC 63 .0306	10:13 NCR 1185	01/01/96				
STATE PERSONNEL						
25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0401	10:12 NCR 986	12/01/95				
.0406	10:12 NCR 986	12/01/95				

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
					State	Local		
		.0504	10:12 NCR 986	12/01/95				
		.0509	10:07 NCR 588	10/01/95				
		.0510 - .0511	10:12 NCR 986	12/01/95				
		.0515	10:12 NCR 986	12/01/95				
		.0808	10:04 NCR 264	08/01/95				
		.0910	10:12 NCR 986	12/01/95				
		.1001	10:04 NCR 264	08/01/95				
		.1001	10:12 NCR 986	12/01/95				
		.1005	10:12 NCR 986	12/01/95				
		.1009	10:04 NCR 264	08/01/95				
		.1009 - .1010	10:12 NCR 986	12/01/95				
		.1201	10:04 NCR 264	08/01/95				
		.1204	10:04 NCR 264	08/01/95				
		.1401	10:04 NCR 264	08/01/95				
		.1801 - .1802	10:04 NCR 264	08/01/95				
		.1928	10:12 NCR 986	12/01/95				
		.2001	10:04 NCR 264	08/01/95			08/08/95	
		.2601 - .2604	10:12 NCR 986	12/01/95				
	01E	.0304 - .0305	10:12 NCR 986	12/01/95				
		.0804	10:04 NCR 264	08/01/95				
		.1001 - .1002	10:12 NCR 986	12/01/95				
		.1110	10:12 NCR 986	12/01/95				
		.1402 - .1409	10:07 NCR 588	10/01/95				
		.1410 - .1411	10:07 NCR 588	10/01/95				
	01H	.0628	10:12 NCR 986	12/01/95				
	01I	.2301 - .2310	10:12 NCR 986	12/01/95				
	01J	.0401 - .0413	10:12 NCR 986	12/01/95				
		.0501 - .0511	10:12 NCR 986	12/01/95				
		.0604 - .0606	10:07 NCR 588	10/01/95				
		.0608	10:07 NCR 588	10/01/95				
		.0610 - .0612	10:07 NCR 588	10/01/95				
		.0613 - .0615	10:07 NCR 588	10/01/95				
		.0801 - .0809	10:12 NCR 986	12/01/95				
	01K	.0312	10:04 NCR 264	08/01/95				
		.0318	10:12 NCR 986	12/01/95				
		.0701 - .0705	10:12 NCR 986	12/01/95				
		.0707 - .0708	10:12 NCR 986	12/01/95				
	01L	.0101 - .0106	10:12 NCR 986	12/01/95				
TRANSPORTATION								
19A NCAC	02D	.0415	10:12 NCR 984	12/31/95				
		.0801	10:04 NCR 254	09/01/95				
	04A	.0004	10:10 NCR 829	12/01/95				

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	**201 00 00**	**$63.00**	**$90.00**
Division of Purchase & Contract	201 10 05	$21.00	$30.00
Federal Block Grant Funds	201 10 33	$17.50	$25.00
Title 2 - Dept. of Agriculture - Full Title	**202 00 00**	**$98.00**	**$140.00**
Food & Drug Protection Division	202 15 09	$28.00	$40.00
Structural Pest Control Committee	202 15 34	$21.00	$30.00
Agricultural Markets	202 15 43	$21.00	$30.00
Plant Industry	202 15 48	$21.00	$30.00
Animal Industry	202 15 52	$21.00	$30.00
Title 3 - Dept. of State Auditor - Full Title	**203 00 00**	**$7.00**	**$10.00**
Title 4 - Dept. of Commerce - Full Title	**204 00 00**	**$87.50**	**$125.00**
Alcoholic Beverage Control Commission	204 15 02	$12.00	$40.00
Banking Commission	204 15 03	$24.50	$35.00
Credit Union Division	204 15 06	$14.00	$20.00
Savings & Loan Division	204 15 09	$14.00	$20.00
Industrial Commission/Workers Compensation	204 15 10	$14.00	$20.00
Savings Institutions Division	204 15 16	$24.50	$35.00
Title 5 - Dept. of Corrections - Full Title	**205 00 00**	**$56.00**	**$80.00**
Division of Prisons	205 15 02	$24.50	$35.00
Title 6 - Council of State - Full Title	**206 00 00**	**$21.00**	**$30.00**
Title 7 - Dept. of Cultural Resources - Full Title	**207 00 00**	**$21.00**	**$30.00**
Title 8 - State Board of Elections - Full Title	**208 00 00**	**$7.00**	**$10.00**
Title 9 - Offices of the Governor & Lt. Governor - Full Title	**209 00 00**	**$31.50**	**$45.00**
Title 10 - Dept. of Human Resources - Full Title	**210 00 00**	**$346.50**	**$495.00**
Licensing of Health Facilities	210 20 10	$45.50	$65.00
Detention Facilities	210 20 20	$31.50	$45.00
Mental Health & Rehabilitation Services	210 20 30	$77.00	$110.00
Social Services	210 20 40	$119.00	$170.00
Children Services/Day Care	210 20 41	$31.50	$45.00
Services for the Aging	210 20 42	$31.50	$45.00
Services for the Blind	210 20 43	$28.00	$40.00
Services for the Deaf & Hard of Hearing	210 20 44	$17.50	$25.00
Employment Opportunities	210 20 45	$35.00	$50.00
Title 11 - Dept. of Insurance - Full Title	**211 00 00**	**$63.00**	**$90.00**
Insurance	211 10 01	$56.00	$80.00
Consumer Services	211 10 04	$24.50	$35.00
Fire & Rescue Services	211 10 05	$17.50	$25.00
Agent Services	211 10 06	$28.00	$40.00
Engineering & Building Codes	211 10 08	$21.00	$30.00
Title 12 - Dept. of Justice - Full Title	**212 00 00**	**$63.00**	**$90.00**
Private Protective Services	212 10 07	$21.00	$30.00
Police & Sheriff's Education & Training Standards	212 10 09	$31.50	$45.00
NC Alarm Systems Licensing Board	212 10 11	$17.50	$25.00
Title 13 - Dept. of Labor - Full Title	**213 00 00**	**$77.00**	**$110.00**
Mine & Quarry Safety	213 15 06	$14.00	$20.00
General Safety/OSHA	213 20 00	$31.50	$45.00
Wage & Hour Rules	213 15 12	$14.00	$20.00
Boiler & Pressure Vessel Safety	213 15 13	$14.00	$20.00
Apprenticeship & Training	213 15 14	$14.00	$20.00
Elevator & Amusement Device Safety	213 15 15	$14.00	$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	**214 00 00**	**$31.50**	**$45.00**
Alcohol Law Enforcement	214 00 08	$17.50	$25.00
Victims Compensation Fund	214 00 11	$14.00	$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	**215 00 00**	**$276.50**	**$395.00**
Environmental Management	215 15 00	$115.50	$165.00
Air Quality	215 15 10	$49.00	$70.00
Water Quality	215 15 20	$49.00	$70.00
Land & Waste Management	215 15 30	$56.00	$80.00
Solid Waste Management	215 15 31	$35.00	$50.00
Underground Storage Tanks	215 15 32	$17.50	$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	$31.50	$45.00
Environmental Health	215 25 00	$105.00	$150.00
Radiation/Nuclear Waste	215 25 10	$42.00	$60.00
Sanitation	215 25 20	$35.00	$50.00
Public Health	215 25 30	$59.50	$85.00
Intoxilizer & Breathalyser	215 25 31	$17.50	$25.00
Title 16 - Dept. of Public Instruction - Full Title	**216 00 00**	**$21.00**	**$30.00**
Elementary & Secondary Education	216 10 06	$21.00	$30.00
Title 17 - Dept. of Revenue - Full Title	**217 00 00**	**$91.00**	**$130.00**
Taxes on Individuals	217 15 10	$31.50	$45.00
Taxes on Business	217 15 20	$56.00	$80.00
Sales & Use Tax Division	217 15 27	$31.50	$45.00
Motor Fuels Tax Division	217 15 29	$21.00	$30.00
Title 18 - Secretary of State - Full Title	**218 00 00**	**$21.00**	**$30.00**
Securities Division	218 10 06	$21.00	$30.00
Title 19A - Dept. of Transportation - Full Title	**219 00 00**	**$63.00**	**$90.00**
Division of Highways	219 10 02	$28.00	$40.00
Division of Motor Vehicles	219 10 03	$35.00	$50.00
Title 20 - Dept. of the State Treasurer - Full Title	**220 00 00**	**$31.50**	**$45.00**
Title 21 - Occupational Licensing Boards - Full Title	**221 00 00**	**$143.50**	**$205.00**
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