

NORTH CAROLINA REGISTER

VOLUME 34 • ISSUE 06 • Pages 466 – 528

September 16, 2019

I. IN ADDITON	
Rate Bureau – Public Notice.....	466
II. PROPOSED RULES	
Administration, Department of	
Department.....	467 – 473
Health and Human Services, Department of	
Medical Care Commission.....	473 – 486
Justice, Department of	
Criminal Justice Education and Training Standards Commission	486 – 489
Public Safety, Department of	
Alcoholic Beverage Control Commission	489 – 491
Environmental Quality, Department of	
Coastal Resources Commission.....	491 – 494
Occupational Licensing Boards and Commissions	
Chiropractic Examiners, Board of	494 – 502
Dental Examiners, Board of.....	502 – 503
State Human Resources, Office of	
State Human Resources Commission	503 – 504
III. TEMPORARY RULES	
State Board of Elections	
State Board of Elections.....	505 – 511
IV. RULES REVIEW COMMISSION	512 – 525
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions.....	526 – 528

PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 431-3000
Fax (919) 431-3104*

*Julian Mann III, Director
Molly Masich, Codifier of Rules
Dana McGhee, Publications Coordinator
Lindsay Silvester, Editorial Assistant
Cathy Matthews-Thayer, Editorial Assistant*

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules	molly.masich@oah.nc.gov	(919) 431-3071
Dana McGhee, Publications Coordinator	dana.mcgee@oah.nc.gov	(919) 431-3075
Lindsay Silvester, Editorial Assistant	lindsay.silvester@oah.nc.gov	(919) 431-3078
Cathy Matthews-Thayer, Editorial Assistant	cathy.thayer@oah.nc.gov	(919) 431-3006

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel	amber.may@oah.nc.gov	(919) 431-3074
Amanda Reeder, Commission Counsel	amanda.reeder@oah.nc.gov	(919) 431-3079
Ashley Snyder, Commission Counsel	ashley.snyder@oah.nc.gov	(919) 431-3081
Alexander Burgos, Paralegal	alexander.burgos@oah.nc.gov	(919) 431-3080
Julie Brincefield, Administrative Assistant	julie.brincefield@oah.nc.gov	(919) 431-3073

Fiscal Notes & Economic Analysis

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov (919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

Jason Moran-Bates, Staff Attorney

Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

NORTH CAROLINA RATE BUREAU PUBLIC NOTICE

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on August 14, 2019, the North Carolina Rate Bureau filed for an increase in rates as to Dwelling insurance policies under its jurisdiction. Public notice of the Filing is being given in two newspapers with statewide distribution, and information is being posted on the websites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing.

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

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Administration intends to adopt the rules cited as 01 NCAC 35B .0101-.0108, .0201-.0204, .0301-.0305, repeal the rules cited as 01 NCAC 35A .0101, .0305, .0309, and repeal through re adoption the rules cited as 01 NCAC 35A .0102, .0103, .0201-.0205, .0301, .0302, .0304, .0306, and .0307.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

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

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: October 15, 2019

Time: 9:00 a.m. - 11:00 a.m.

Location: Conference room, Capehart-Crocker House, 424 North Blount Street, Raleigh, North Carolina 27603

Reason for Proposed Action: Rules scheduled for re adoption pursuant to the periodic review set forth in G.S. 150B-21.3.

Due to substantial reorganization, the Department is redesignating 01 NCAC 35 as 01 NCAC 35A and adopting new rules under Chapter 35B.

Comments may be submitted to: Shanon M. Gerger, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301; phone (984) 236-0008; fax (919) 733-9571; email adminrules@doa.nc.gov

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule.

The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

SUBCHAPTER 35A – STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0100 - PURPOSE AND ORGANIZATION

01 NCAC 35A .0101 DEFINITIONS

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35A .0102 PURPOSE
01 NCAC 35A .0103 ORGANIZATION OF THE CAMPAIGN

Authority G.S. 143-340(26); 143B-10.

SECTION .0200 - APPLICATION PROCESS AND SCHEDULE

01 NCAC 35A .0201 APPLICATIONS
01 NCAC 35A .0202 CONTENT OF APPLICATIONS
01 NCAC 35A .0203 REVIEW AND SCHEDULE
01 NCAC 35A .0204 RESPONSE
01 NCAC 35A .0205 AGREEMENTS

Authority G.S. 143-340(26); 143-3.3; 143B-10.

SECTION .0300 - GENERAL PROVISIONS

01 NCAC 35A .0301 OTHER SOLICITATION PROHIBITED
01 NCAC 35A .0302 COERCIVE ACTIVITIES PROHIBITED

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35A .0304 METHODS OF GIVING AND TERMS OF CONTRIBUTION

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35A .0305 CAMPAIGN LITERATURE

Authority G.S. 143-340(26); 143B-10.

01 NCAC 35A .0306 DESIGNATION CAMPAIGN

01 NCAC 35A .0307 DISTRIBUTION OF UNDESIGNATED FUNDS

Authority G.S. 143-3.3; 143-340(26); 143B-10.

01 NCAC 35A .0309 CAMPAIGN OPERATION

Authority G.S. 143-3.3; 143-340(26); 143B-10.

SUBCHAPTER 35B – STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0100 - ORGANIZATION

01 NCAC 35B .0101 DEFINITIONS

The following definitions shall apply:

- (1) "Administrative Expenses" means expenses for reporting and informational activities related to business management and administrative activities which are neither educational, nor direct conduct of program services, nor fund-raising services.
- (2) "Audit" or "Audited Financial Statement" shall mean an examination of financial statements of an organization by a Certified Public Accountant ("CPA"), conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, another comprehensive basis of accounting.
- (3) "Campaign Contribution" means the amount of funds received by a contributor.
- (4) "Campaign Fiscal Year" shall be January 1 through December 31 of each year.
- (5) "Campaign Solicitation Organization" or "Solicitation Organization" means the regional contacts for fund-raising.
- (6) "Campaign Solicitation Period" means the period between August 1 and December 31 of each year in which solicitations will be conducted.
- (7) "Charitable Organizations" means any Independent Organization or Federation approved to solicit contributions.
- (8) "Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising,

- (9) "Fund-raising" or "Solicitation Activities" means the act of soliciting contributions, gifts, grants, etc., participating in federated campaigns; maintaining donor mailing lists; preparing and distributing fund-raising manuals, instructions and other materials; and conducting other activities involved with soliciting contributions.
- (10) "Fund-raising Consultant" means a consultant as defined in G.S. 131F-2(10).
- (11) "Fund-raising Expenses" means the total expense incurred from all activities that constitute, or are an integral and inseparable part of, an appeal for financial support.
- (12) "Fund-raising Solicitor" means a solicitor as defined in G.S. 131F-2(19).
- (13) "Independent Organization" or "Independent Charitable Organization" means a singular voluntary charitable agency.
- (14) "Member Charitable Organization" means a voluntary charitable agency that is organized under a Federation or Federated Group.
- (15) "Program Services Expenses" means expenses for those activities that the reporting organization was created to conduct which fulfill the purpose or mission for which the organization exists, exclusive of fund-raising and administrative expenses, and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.
- (16) "SECC Advisory Committee" or "Advisory Committee" means an appointed committee that serves as an application point for all Charitable Organizations applying to participate in the SECC.
- (17) "State Employee Combined Campaign" or "SECC" shall be the official name of the state employee charitable fund-raising drive.
- (18) "Statewide Campaign Organization" means the organization contracted to manage the SECC's administrative operations.
- (19) "Undesignated Funds" means solicited funds received in which the designee is not stated or that has not been approved through the SECC application process.

Authority G.S. 143-340(26).

01 NCAC 35B .0102 PURPOSE AND ORGANIZATION

- (a) The purpose of the State Employee Combined Campaign ("SECC") is to provide a single charitable campaign for all state employees to voluntarily contribute to approved Independent Organizations or Federations in accordance with the Rules of this Chapter.
- (b) The SECC shall be comprised as follows:

- (1) a Statewide Campaign Chair;
- (2) an Advisory Committee;
- (3) a Statewide Campaign Organization; and
- (4) a Campaign Solicitation Organization.

- (2) have an Audit to demonstrate financial accountability;
- (3) be a tax-exempt organization under the Internal Revenue Code;
- (4) verify a bond or have proof of insurance in an amount that covers the total amount of funds to be allocated to each of the respective Charitable Organizations; and
- (5) agree to comply with the terms of the Statewide Campaign Organization contract.

Authority G.S. 143-340(26).

01 NCAC 35B .0103 STATEWIDE CAMPAIGN CHAIR

(a) The Statewide Campaign Chair shall be appointed each year by the Governor from one of the Executive Cabinet, Council of State, System of Community Colleges, or University Administration agencies.

(b) The Statewide Campaign Chair shall:

- (1) serve as director of the campaign;
- (2) enlist the support and cooperation of the head of each State department and university to promote the SECC's purpose;
- (3) set the dates of and approve the published materials for the SECC in accordance with Rule .0108 of this Chapter;
- (4) contract for the designation of the Statewide Campaign Organization;
- (5) appoint members the Advisory Committee; and
- (6) serve as Chair over Advisory Committee meetings.

Authority G.S. 143-340(26).

01 NCAC 35B .0104 SECC ADVISORY COMMITTEE

(a) The SECC Advisory Committee members shall serve four-year staggered terms and shall serve no more than two consecutive terms. In the event of a vacancy, the Statewide Campaign Chair shall appoint a replacement to fill an unexpired term.

(b) The SECC Advisory Committee shall meet at the discretion of the Statewide Campaign Chair and no fewer than four meetings per year shall be held. The Advisory Committee shall conduct business only when a quorum of one-third of the Committee membership, including the Statewide Campaign Chair, is present.

(c) The SECC Advisory Committee shall review the recommendations made by the Statewide Campaign Organization and shall accept or reject its recommendations.

(d) The SECC Advisory Committee shall review the Statewide Campaign Organization's annual work plan and a budget to cover all of the costs related to the SECC.

(e) An SECC Advisory Committee member shall not participate in any decision where that Committee member may have a conflict of interest or the appearance of a conflict of interest, either of a personal nature or with regard to the agency in which members is employed.

Authority G.S. 143-340(26).

01 NCAC 35B .0105 STATEWIDE CAMPAIGN ORGANIZATION

(a) To be eligible for consideration as a potential Statewide Campaign Organization, the applicant shall:

- (1) have the ability to manage a state-wide fund-raising campaign;

(b) The Statewide Campaign Organization shall conduct its own organization operations separately from their duties performed as the Statewide Campaign Organization for the SECC.

(c) The Statewide Campaign Organization shall:

- (1) serve as the financial administrator of the SECC;
- (2) provide staff to administer, maintain records, and provide central management functions for the SECC in consultation with the SECC Advisory Committee;
- (3) review Independent Organization and Federation applications for compliance with Rules .0201 and .0201 of this Chapter;
- (4) provide a centralized pledge processing service in order to process all pledge forms of state employees;
- (5) compile reports for the SECC Advisory Committee including:
 - (A) a list of all accepted Independent Organizations and Federations;
 - (B) a budget of anticipated Fund-raising, Administrative, and Program Services expenses; and
 - (C) an annual work plan of goals and objectives.
- (6) print and distribute pledge forms, campaign report forms and collection envelopes to each Campaign Solicitation Organization;
- (7) collect pledge reports and envelopes from each Campaign Solicitation Organization;
- (8) notify the Independent Organization and Federation of contributions they are to receive no later than March 1 following the Campaign Solicitation Period;
- (9) transmit quarterly to the Independent Organization and Federation its portion of the charitable contributions;
- (10) maintain an accounting of all Campaign Contributions and submit an audited end of campaign report of the following:
 - (A) amounts contributed and pledged;
 - (B) number of contributions; and
 - (C) amounts distributed to the participating Independent Organization or Federation.
- (11) coordinate annual statewide or regional training sessions for all Campaign Solicitation Organizations;

- (12) serve as liaison to all participating Independent Organizations and Federations;
- (13) educate state employees in the services provided through their support;
- (14) deduct, before disbursements are made, direct costs of operating the SECC from the gross contributions and charge each Independent Organization or Federation its proportionate share of the operational costs as determined in Rule .0107 of this Chapter; and
- (15) document the total actual costs of the SECC, which shall not exceed 20 percent of gross contributions.

Authority G.S. 143-340(26).

01 NCAC 35B .0106 CAMPAIGN SOLICITATION ORGANIZATION

(a) Each State department or university and shall have a Campaign Solicitation Organization within their agency. The Campaign Solicitation Organization shall ensure that solicitation activities are organized and conducted in accordance with Rule .0302 of this Chapter and shall:

- (1) assist in planning solicitation activities for their department or university;
- (2) act as liaison between state employees and the Statewide Campaign Organization by soliciting employees in their assigned area;
- (3) report all pledges and contributions to their campaign coordinators or department leaders; and
- (4) distribute and collect pledge forms.

(b) The Campaign Solicitation Organization shall insure that all donations are made on a voluntary basis, allow free choice, and prevent an impression of required giving. The Campaign Solicitation Organization may solicit contributions at employee meetings, events, through written or email communication and individual contact. Solicitation Activities may be conducted during working hours using methods that promote true voluntary giving.

Authority G.S. 143-340(26).

01 NCAC 35B .0107 CONTRACT

(a) The SECC and Statewide Campaign Organization shall execute a three-year contract for services. The contract shall allow a charge for fund-raising, administrative, and program services expenses for the Statewide Campaign Organization. The contract shall be subject to approval by the Statewide Campaign Chair.

(b) The Statewide Campaign Organization shall recover from gross receipts of the SECC its expenses that shall reflect the actual costs of administering the campaign. Total actual costs of the campaign to be recovered pursuant to the contract shall be documented and shall not exceed 20 percent of budgeted gross receipts. The campaign expenses shall be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts. No costs associated with the campaign shall be borne by the State. All costs shall be borne by the proceeds from the campaign.

Authority G.S. 143-340(26).

01 NCAC 35B .0108 CAMPAIGN LITERATURE

(a) The SECC shall provide a campaign resource guide designed by the SECC Advisory Committee and all publicity shall be subject to approval by the Statewide Campaign Chair. Publicity shall not favor one Independent Organization or Federation over another.

(b) The Statewide Campaign Chair shall approve, prior to distribution, the content of any campaign pledge or distribution card to ensure compliance with the State Controller's requirements for format and substance.

(c) The Independent Organization or Federation approved for inclusion in the SECC shall be listed in the campaign literature no more than one time unless:

- (1) it is in the Independent Organization or Federation's interest to more specifically direct their gifts to separate geographic locations; and
- (2) the Independent Organization or Federation maintains records that determine that contributions are designated to that geographic area accrue only to the benefit and purposes of the designated area.

Authority G.S. 143-340(26).

SECTION .0200 - APPLICATION PROCESS AND SCHEDULE

01 NCAC 35B .0201 APPLICATIONS

The Independent Organization or Federation shall apply annually to the Statewide Campaign Organization. Applications may be obtained via the SECC website at www.ncsecc.org. A Federation may submit an application on behalf of a Member Charitable Organization. Applications for inclusion into the SECC current Campaign Solicitation Period shall be received or postmarked by the Statewide Campaign Organization no later than March 1st to be included in the following fall campaign. If March 1st falls on a Sunday or federal holiday, the application shall be postmarked or received by the Statewide Campaign Organization by the end of the next day not a Sunday or federal holiday.

Authority G.S. 143-340(26).

01 NCAC 35B .0202 CONTENT OF APPLICATION

(a) The Independent Organization or Federation seeking inclusion in the SECC shall submit an application to the Statewide Campaign Organization. The application shall include:

- (1) the name of the Independent Organization or Federation;
- (2) name and title of a contact person;
- (3) contact person's telephone number and email address;
- (4) calculation of fund-raising and administrative costs; and
- (5) a signed certification of compliance certifying compliance with the eligibility standards listed in Paragraph .0203 of this Rule.

(b) The Independent Organization or Federation seeking inclusion in the SECC shall submit with the application the attached documentation:

- (1) a letter from the Independent Organization or Federation signed by a voting member of the Board of Directors requesting inclusion in the SECC;
- (2) a certification of compliance from the Independent Organization or Federation signed by Board of Director or agent authorized to sign documents on behalf of the organization. A Federation shall submit certifications for each of a Member Charitable Organization;
- (2) a description of services provided and service area of the organization;
- (3) documentation showing the percentage of the organization's total support and revenue that is allocated to administration and fund-raising, to include:
 - (A) copies of the organization's annual report;
 - (B) newsletters;
 - (C) brochures; or
 - (D) fact sheets.
- (4) a signed copy of the Independent Organization or Federation's IRS 990 form. If the Independent Organization or Federation is not required to file the form with the IRS, they shall submit pages 1 and 2 of the completed form with an annotation on the document that it is for SECC purposes only. The IRS 990 form shall cover the same fiscal year and, if revenue and expenses on the two documents differ, these amounts shall be reconciled on an accompanying statement by the CPA who completed the financial audit or review. The SECC shall reject any application from the Independent Organization or Federation with fund-raising and administrative expenses in excess of 25 percent of the total revenue, unless the organization demonstrates to the SECC Advisory Committee that its actual expenses for those purposes are reasonable under all the circumstances of the case and specifies steps the organization shall take to accomplish a reduction within the next fiscal year. The percentage shall be computed from the information on the IRS 990 form by adding the amount spent on management and general expenses to the amount spent on fund-raising and dividing the resulting total by total revenue;
- (5) a current copy of the Independent Organization or Federation's Charitable License issued by the NC Secretary of State;
- (6) a current copy of the certificate of existence, for domestic corporations, or certificate of authorization, for foreign corporations, issued by the NC Secretary of State;

Authority G.S. 143-340(26).

01 NCAC 35B .0203 CRITERIA FOR APPLICANTS

The SECC Advisory Committee may approve an Independent Organization or Federation for inclusion if the following criteria is met:

- (1) be licensed through the North Carolina Secretary of State to solicit funds if required;
- (2) be able to maintain the confidentiality of the contributor list;
- (3) not permit payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising, and permit no paid solicitation by a fund-raising consultant or solicitor in the SECC;
- (4) have a written board policy that assures compliance with all State and Federal laws. Nothing herein denies eligibility to any organization that is otherwise eligible because it is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, age, national origin or physical or mental disability;
- (5) have contact information available to respond to inquiries from state employees, via email, telephone, or messaging;
- (6) not use SECC contributions for lobbying activities; and
- (7) have a board of directors that contains no less than three persons who meet at least three times a year. The board of directors shall maintain records of all decisions made and make those decisions available to the SECC for inspections if requested.

Authority G.S. 143-340(26).

01 NCAC 35B .0204 APPLICATION REVIEW PROCESS

- (a) The Statewide Campaign Organization shall review the application materials for compliance with Rule .0202 of this Chapter and report to the SECC Advisory Committee the status of this review within four weeks of the submission deadline provided in Rule .0201 of this Chapter.
- (b) The SECC Advisory Committee shall reject an application for failing to comply with Rule .0202 of this Chapter or request additional information if necessary to make an eligibility determination under Rule .0203 of this Chapter.
- (c) The Independent Organization or Federation shall submit the requested additional information within 10 days of the notification date. Failure to do so may result in the denial of eligibility.
- (d) The Statewide Campaign Organization shall notify all Independent Organizations and Federations of the SECC Advisory Committee's decision within 60 days of the submission deadline.
- (e) The Independent Organization or Federation may submit a written appeal to the Statewide Campaign Organization within 10

business days of receipt of notification of rejection by the SECC Advisory Committee.

(f) If after reconsideration, the SECC Advisory Committee upholds its rejection, the Independent Organization or Federation may commence a contested case by filing a petition under G.S. 150B-23.

Authority G.S. 143-340(26).

SECTION .0300 GENERAL PROVISIONS

01 NCAC 35B .0301 OPERATING REQUIREMENTS

(a) The Independent Organization or Federation that receives the names and addresses of state employees shall segregate this information from all other lists of contributors and use the lists only for acknowledgement purposes. This segregated list shall not be sold or released to anyone outside of the recipient organization.

(b) The Independent Organization or Federation shall disburse contribution amounts on the basis of actual funds received rather than the amount pledged.

(c) The Federation shall be responsible for disbursing contributions to their Member Charitable Organizations on the basis of actual funds received rather than amounts pledged and shall disburse quarterly to Member Charitable Organizations.

(d) In the event the Independent Organization or Federation or any of its directors, officers, or employees are the subject of any investigation or legal proceeding by any federal, state or local law enforcement authority based upon its charitable solicitation activities, delivery program services, or use of funds, the organization shall inform the SECC within 10 days of its learning or being notified of the investigation or proceeding. The Independent Organization or Federation shall also inform the SECC of any investigation or proceeding with 10 day of the outcome.

(f) Any Independent Organization or Federation that fails to comply with this Rule or Rule .0203 of this Chapter may be declared ineligible by the SECC Advisory Committee and the remainder of the contributions shall be classified as Undesignated Funds and distributed pursuant to Rule .0305 of this Chapter. Any Member Charitable Organization that fails to comply with this Rule or Rule .0203 of this Chapter may be declared ineligible by the SECC Advisory Committee and the remainder of the contributions shall be redistributed in accordance with the Federation's policies.

Authority G.S. 143-340(26).

01 NCAC 35B .0302 AUTHORIZED SOLICITATION METHODS

(a) All activities of the campaign shall be conducted in a manner that promotes a unified solicitation on behalf of all participants. While it is permissible to individually identify, describe or explain the Independent Organization or Federation in the campaign for informational purposes, no person affiliated with the campaign shall engage in any campaign activity that is construed to either advocate or criticize specific Charitable Organizations. The Independent Organization or Federation shall not engage in any solicitation activities at any state employee work site.

Bloodmobiles or employee member associations shall be excluded from this restriction.

(b) No Campaign Solicitation Organization representative shall engage in the following:

- (1) provide nor use contributor lists for purposes other than then collection, forwarding, and acknowledgment of contributions.
- (2) set mandatory employee participation goals;
- (3) establish personal dollar goals or quotas; and
- (4) develop nor use lists of non-contributors.

Authority G.S. 143-340(26).

01 NCAC 35B .0303 REVOCATION OF ELIGIBILITY

Violations of Rules .0301 and .0302 of this Chapter by the Individual Organization or Federation may result in the revocation of eligibility of the organization. The Independent Organization or Federation shall be given notice of the violation and an opportunity to respond prior to any action being taken by the SECC Advisory Committee. The Independent Organization or Federation that is dissatisfied with the revocation of its eligibility may file an appeal to the SECC Advisory Committee within 10 days of the notification postmark date. The Independent Organization or Federation that is dissatisfied with the appeal determination of the SECC Advisory Committee may commence a contested case by filing a petition under G.S. 150B-23.

Authority G.S. 143-340(26).

01 NCAC 35B .0304 TERMS OF CONTRIBUTIONS/DESIGNATED CAMPAIGN

(a) If an employee chooses to contribute to an Independent Organization or Federation through the SECC, he or she shall designate an Independent Organization or Federation to receive the contribution that has been approved in accordance with Rule .0204 of this Chapter. A list of approved Charitable Organizations shall be provided to each employee by the SECC. Any funds designated to an organization that has not been approved shall be treated as Undesignated Funds and be distributed in accordance with Rule .0305 of this Chapter.

(b) Campaign Contributions may be made by payroll deduction, personal check or credit card. If an employee chooses to use the payroll deduction method of contribution, he or she shall agree to have the deduction continued for one year with equal amounts deducted from each pay period. If the employee authorized payroll deduction or credit card, the minimum amount of the deduction is five dollars per month. Payroll deductions shall be processed pursuant to G.S. 143B-426.40A.

(c) All contributions shall be a minimum of ten dollars annually per Independent Organization or Federation. If a designation does not comply with the minimum contribution it shall be treated as Undesignated Funds and be distributed in accordance with Rule .0305 of this Chapter.

(d) An employee shall not change the Independent Organization or Federation designated contribution outside of the Campaign Solicitation Period.

(e) When the total contribution for the Independent Organization or Federation is two hundred fifty dollars or less, the SECC Advisory Committee may direct the contribution be made in a

lump sum the first quarter to the recipient Independent Organization or Federation. Interest earnings shall be disbursed to the Independent Organization or Federation based on its proportionate share of the total gross contributions if an interest-bearing account is established. Undesignated Funds shall be distributed in accordance with Rule .0305 of this Chapter.

Authority G.S. 143-340(26).

01 NCAC 35B .0305 DISTRIBUTION OF UNDESIGNATED FUNDS

Any monies not designated to an Independent Organization or Federation that has been approved to received contributions through the SECC shall be deemed Undesignated Funds. Undesignated Funds shall be distributed to an Independent Organization or Federation based on its percentage of total designated funds during the current Campaign Solicitation Period after total actual costs of the campaign are recovered pursuant to Rule .0105 of this Chapter.

Authority G.S. 143-340(26).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to readopt with substantive changes the rules cited as 10A NCAC 13B .1902, .1918, .1925, .3001, .3101, .3302, .5412, .5413 and readopt without substantive changes the rules cited as 10A NCAC 13B .1915, .3110, .3204, .3205, and .3303.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://info.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: October 1, 2019

Time: 10:00 a.m.

Location: Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13B, Licensing of Hospitals, these 13 proposed readoption rules were part of the 40 rules determined as "Necessary With Substantive Public Interest," requiring readoption. With input from stakeholders, eight rules are proposed for readoption with substantive changes to update standard of practice, clarify language, address Rules Review Commission objections, and reference General Statutes.

Five rules are proposed for readoption without substantial changes to address technical changes in the rules.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .1900 - SUPPLEMENTAL RULES FOR THE LICENSURE OF THE SKILLED: INTERMEDIATE: ADULT CARE HOME BEDS IN A HOSPITAL

10A NCAC 13B .1902 DEFINITIONS

The following definitions shall apply throughout this Section, unless text otherwise clearly indicates to the contrary:

- (1) "Accident" means something occurring by chance or without intention ~~which that~~ has caused physical or mental harm to a patient, ~~resident~~ resident, or employee.
- (2) "Administer" means ~~the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means. as defined in G.S. 90-87.~~
- (3) "Administrator" means the person who has authority for and is responsible to the governing board for the overall operation of a facility.
- (4) "Brain injury long-term care" is defined as an interdisciplinary, intensive maintenance program for patients who have incurred brain

- damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, ~~eognitive~~ cognitive, and behavioral functioning.
- (5) "Capacity" means ~~the maximum number of patient or resident beds which the facility is licensed to maintain at any given time. This number shall be determined as follows:~~
- (a) ~~Bedrooms shall have minimum square footage of 100 square feet for a single bedroom and 80 square feet per patient or resident in multi bedded rooms. This minimum square footage shall not include space in toilet rooms, washrooms, closets, vestibules, corridors, and built in furniture.~~
- (b) ~~Dining, recreation and common use areas available shall total no less than 25 square feet per bed for skilled nursing and intermediate care beds and no less than 30 square feet per bed for adult care home beds. Such space must be contiguous to patient and resident bedrooms.~~
- (6)(5) "Combination Facility" means any hospital with nursing home beds ~~which~~ that is licensed to provide more than one level of care such as a combination of intermediate care ~~and/or~~ and skilled nursing care and adult care home care.
- (7) ~~"Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.~~
- (8)(6) "Department" means the North Carolina Department of Health and Human Services.
- (9)(7) "Director of Nursing" means the nurse who has authority and ~~direct~~ responsibility for all nursing services and nursing care.
- (10)(8) "Dispense" means ~~preparing and packaging a prescription drug or device in a container and labeling the container with information required by state and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".~~ as defined in G.S. 90-87.
- (11)(9) "Drug" means ~~substances:~~
- (a) ~~recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;~~
- (b) ~~intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;~~
- (c) ~~intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and~~
- (d) ~~intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph; but does not include devices or their components, parts, or accessories. as defined in G.S. 90-87.~~
- (12)(10) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) ~~"Existing Facility" means a licensed facility; or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the department through the preliminary working drawings stage prior to the effective date of this Rule.~~
- (14) ~~"Exit Conference" means the conference held at the end of a survey, inspection or investigation, but prior to finalizing the same, between the department's representatives who conducted the survey, inspection or investigation and the facility administration representative(s).~~
- (15)(11) "Incident" means an intentional or unintentional action, occurrence or happening ~~which that~~ is likely to cause or lead to physical or mental harm to a patient, ~~resident~~ resident, or employee.
- (16)(12) "Licensed Practical Nurse" means ~~a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A. as defined in G.S. 90-171.30 or G.S. 90-171.32.~~
- (17) ~~"Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.~~
- (18)(13) "Medication" means drug as defined in (12) Item (9) of this Rule.
- (19) ~~"New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the department subsequent to the effective date of this Rule. If determined by the department that more than one half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.~~
- (20)(14) "Nurse Aide" means any individual providing nursing or nursing-related services to patients in a facility, and is not a licensed health professional, a qualified dietitian or someone who volunteers to provide such services

without pay, and who is listed in a nurse aide registry approved by the Department.

(21)(15) "Nurse Aide Trainee" means an individual who has not completed an approved nurse aide training course and competency evaluation and is demonstrating knowledge, while performing tasks for which that they have been found proficient in by an instructor. These tasks shall be performed under the ~~direct~~ supervision of a registered nurse. The term does not apply to volunteers.

(22)(16) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing ~~home~~" home, ~~which is~~ the usual prerequisite level for state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.

(23)(17) "Nurse in Charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.

(24)(18) "On Duty" means personnel who are awake, dressed, and responsive to patient needs and ~~physically~~ present in the facility performing assigned duties.

(25)(19) "Patient" means any person admitted for care to a skilled nursing or intermediate care facility.

(26)(20) "Physician" means ~~a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina. as defined in G.S. 90-9.1 or G.S. 90-9.2.~~

(27)(21) "Qualified Dietitian" means ~~a person who meets the standards and qualifications established by the Committee on Professional Registration of the American Dietetic Association included in "Standards of Practice" seven dollars and twenty five cents (\$7.25) or "Code of Ethics for the Profession of Dietetics" two dollars and fifteen cents (\$2.15), American Dietetic Association, 216 W. Jackson Blvd., Chicago, IL 60606 6995, as defined in 42 CFR 483.60(a)(1), herein incorporated by reference including subsequent amendments and editions. Electronic copies of 42 CFR 483.60 can be obtained free of charge at https://www.ecfr.gov/cgi-bin/text-idx?SID=1260800a39929487f0ca55b0ab5e710b&mc=true&tpl=/ecfrbrowse/Title42/42cfrv5_02.tpl#0.~~

(28)(22) "Registered Nurse" means ~~a nurse who is duly licensed as a registered nurse under~~ as defined in G.S. 90, Article 9A.

~~(29)(23) "Resident" means any person admitted for care to an adult care home, as defined in G.S.131D-2.1.~~

~~(30) "Sitter" means an individual employed to provide companionship and social interaction to a particular resident or patient, usually on a private duty basis.~~

~~(34)(24) "Supervisor-in-Charge" means a duly licensed nurse to whom supervisory duties have been delegated by the Director of Nursing.~~

~~(32)(25) "Ventilator dependence" means physiological dependency by a patient on the use of a ventilator for more than eight hours a day.~~

Authority G.S. 131E-79.

10A NCAC 13B .1915 ADULT CARE HOME PERSONNEL REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 13B .1918 TRAINING

(a) A licensed facility shall provide ~~for all~~ patient or resident care employees a planned orientation and continuing education program emphasizing patient or resident assessment and planning, activities of daily living, personal grooming, rehabilitative nursing or restorative care, other patient or resident care policies and procedures, patients' rights, and staff performance expectations. Attendance and subject matter covered shall be documented for each ~~session~~ session, retained in accordance with policy established by the facility, and available for licensure inspections.

(b) The administrator shall assure that ~~each employee is~~ employees are oriented within the first week of employment to the facility's philosophy and goals.

(c) ~~Each employee~~ Employees shall have specific on-the-job training as necessary ~~for the employee to properly perform his~~ their individual job assignment.

(d) Unless otherwise prohibited, a nurse aide trainee may be employed to perform the duties of a nurse aide for a period of time not to exceed four months. During this period of time the nurse aide trainee shall be permitted to perform only those tasks ~~for which minimum acceptable~~ that competence has been demonstrated and documented on a skills check-off record. ~~Job applicants for nurse aide positions who were formerly qualified nurse aides but have not been gainfully employed as such for a period of 24 consecutive months or more shall be employed only as nurse aide trainees and must re-qualify as nurse aides within four months of hire by successfully passing an approved competency evaluation. Any individual, nursing home, or education facility may offer Department approved vocational education for nursing home nurse aides. An accurate record Nurse aide I shall meet the training and competency evaluation standards in 10A NCAC 130 .0301, incorporated herein by reference including subsequent amendments and editions. A record of nurse aide qualifications shall be maintained for each nurse aide used by a facility and shall be retained in the general personnel files of the facility. facility in accordance with policy established by the facility.~~

~~(e) The curriculum content required for nurse aide education programs shall be subject to approval by the Division of Health Service Regulation and shall include, as a minimum, basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and patients' rights. Successful course completion shall be determined by passing a competency evaluation test. The minimum number of course hours shall be 75 of which at least 20 hours shall be classroom and at least 40 hours of supervised practical experience. The initial orientation to the facility shall be exclusive of the 75 hour training program. Competency evaluation shall be conducted in each of the following areas:~~

- ~~(1) Observation and documentation,~~
- ~~(2) Basic nursing skills,~~
- ~~(3) Personal care skills,~~
- ~~(4) Mental health and social service needs,~~
- ~~(5) Basic restorative services, and~~
- ~~(6) Residents' Rights.~~

~~(f) Successful course completion and skill competency shall be determined by competency evaluation approved by the Department. Commencing July 1, 1989, nurse aides who had formerly been fully qualified under nurse aide training requirements may re-establish their qualifications by successfully passing a competency evaluation test.~~

Authority G.S. 131E-79; 42 U.S.C. 1396 r (b)(5).

10A NCAC 13B .1925 REQUIRED SPACES

~~The total space requirements shall be those set forth in Rule .1902(5) of this Section. Physical therapy and occupational therapy space shall not be included in these totals.~~

(a) A combination or nursing facility shall meet the following requirements for bedrooms, dining, recreation, and common use areas:

- (1) single bedrooms shall be provided with not less than 100 square feet of floor area;
- (2) bedrooms with more than one bed shall be provided with not less than 80 square feet of floor area per bed;
- (3) dining, recreation, and common use areas shall:
 - (A) total not less than 25 square feet of floor area per bed for skilled nursing and intermediate care beds;
 - (B) total not less than 30 square feet of floor area per bed for adult care home beds; and
 - (C) be contiguous to patient and resident bedrooms.

(b) Floor space for the following rooms, areas, and furniture shall not be included in the floor areas required by Paragraph (a) of this Rule:

- (1) toilet rooms;
- (2) vestibules;
- (3) bath areas;
- (4) closets;
- (5) lockers;
- (6) built-in furniture;
- (7) movable wardrobes;
- (6) corridors; and

(7) areas for physical and occupational therapy.

Authority G.S. 131E-79.

SECTION .3000 - GENERAL INFORMATION

10A NCAC 13B .3001 DEFINITIONS

Notwithstanding Section .1900 of this Subchapter, The following definitions shall apply throughout this Section Subchapter unless the context clearly indicates to the contrary:

- (1) "Appropriate" means suitable or fitting, or conforming to standards of care as established by professional organizations.
- (2) "Authority having jurisdiction" means the Division of Health Service Regulation.
- (3) "Certified Dietary Manager" or "CDM" means an individual who is certified by the Certifying Board of the Dietary Managers and meets the standards and qualification as referenced in the "Dietary Manager Training Program Requirements." These standards include any subsequent amendments and editions of the referenced manual. Copies of the "Dietary Manager Training Program Requirements" may be purchased for fifteen dollars (\$15.00) from the Dietary Managers Association, 406 Surry Woods Dr., St. Charles, IL 60174, obtained free of charge at <https://www.cbdmonline.org/>.
- (4) "Competence" means the state or quality of being able to perform specific functions well; skill; ability.
- (5) "Comprehensive" means covering completely, inclusive; large in scope or content.
- (6) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .3102 of this Subchapter.
- (7) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- ~~(6)(8)~~ "Continuous" means ongoing or uninterrupted, 24 hours per day.
- ~~(7)(9)~~ "CRNA" means a Certified Registered Nurse Anesthetist as ~~eredentialed by the Council on Certification of Nurse Anesthetists and recognized by the Board of Nursing in 21 NCAC 36 .0226.~~ defined in G.S. 90-171.21(d)(4).
- ~~(8)(10)~~ "Credentialed" means that the individual having a given title or position has been credited with the right to exercise official responsibilities to provide specific patient care and treatment services, within defined limits, based primarily upon the individual's license, education, training, experience, competence, and judgment.
- ~~(9)(11)~~ "Department" means the Department of Health and Human Services.

- (10)(12) "Dietetics" means ~~the integration and application of principles derived from the science of nutrition, biochemistry, physiology, food and management and from behavioral and social sciences to achieve and maintain optimal nutritional status.~~ as defined in G.S. 90-352.
- (11)(13) "Dietitian" means ~~an individual who is licensed according to as defined in G.S. 90, Article 25, or is registered by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA) according to the standards and qualifications as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs", "The Registration Eligibility Application for Dietitians" and the "Continuing Professional Education" and subsequent amendments or editions of the reference material. Copies of the "Accreditation/Approval Manual for Dietetic Education Programs" may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars (\$3.00) minimum shipping and handling from ADA 216 W. Jackson Blvd., Chicago, IL 60606 9 6995. Article 25.~~
- (12)(14) "Dietetic Technician Registered" or "DTR" means ~~an individual who is registered by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA) according to the standards and qualifications as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Programs" which is incorporated by reference including any subsequent amendments and editions. Copies of the "Accreditation/Approval Manual for Dietetic Education Programs" may be purchased for twenty one dollars and ninety five cents (\$21.95) plus three dollars (\$3.00) minimum for shipping and handling from the ADA 216 W. Jackson Blvd., Chicago, IL 60606 9 6995. as defined in G.S. 90-352.~~
- (13)(15) "Direct Supervision" means the state of being under the immediate control of a supervisor, manager, or other person of authority.
- (14)(16) "Division" means the Division of Health Service Regulation.
- (15)(17) "Facility" means a hospital as defined in G.S. 131E-76.
- (16)(18) "Free standing facility" means a facility that is physically separated from the primary hospital building or separated by a three hour fire containment wall.
- (17)(19) "Full-time equivalent" means a unit of measure of employee work time that is equal to the number of hours that one full-time employee would work during one calendar year if the employee worked eight hours a day, five days a week, and 52 weeks a year; i.e. 2,080 hours per year.
- (18)(20) "Governing body" means the authority as defined in G.S. 131E-76.
- (19)(21) "Imaging" means a reproduction or representation of a body or body part for diagnostic purposes by radiologic intervention that may include conventional fluoroscopic exam, magnetic resonance, nuclear or radio-isotope scan.
- (20)(22) "Invasive procedure" means a procedure involving puncture or incision of the skin, insertion of an instrument or foreign material into the body (excluding venipuncture and intravenous therapy).
- (21)(23) "LDRP" (labor, delivery, recovery, postpartum) means a specific single occupancy obstetrical use room counted as a licensed bed.
- (22)(24) "License" means formal permission to provide services as granted by the State.
- (23)(25) "Medical staff" means the formal organization that is comprised of ~~all of those~~ individuals who have sought and obtained clinical privileges in a facility. Those members of the medical staff who regularly and routinely admit patients to a facility constitute the active medical staff.
- (24)(26) "Mission statement" means a written statement of the philosophy and beliefs of the organization or hospital as approved by the governing body.
- (25)(27) "Neonate" means the newborn from birth to one month.
- (26)(28) "NP" means a Nurse Practitioner as defined in G.S. 90-6; G.S. 90-8.2, 90-18(14) 90-18(14), and 90-18.2.
- (27)(29) "Nurse executive" means ~~a registered nurse who is the director of nursing services or a representative of decentralized nursing management staff.~~ as defined in 21 NCAC 36 .0109.
- (28)(30) "Nurse midwife" means ~~a Certified Nurse Midwife~~ as defined in G.S. 90, Article 10. G.S. 90-171.21(4).
- (29)(31) "Nursing facility" means ~~that portion of a hospital that is approved to provide skilled nursing care.~~ as defined in G.S. 131E-116(2).
- (30)(32) "Nursing staff" means the registered nurses, licensed practical nurses, nurse aides, and others under nurse supervision, who provide ~~direct~~ patient care. The term also includes clerical personnel who work in clinical areas under nurse supervision.
- (33) "Nutrition and Dietetic Technician Registered" means as defined by the Academy of Nutrition and Dietetics. A copy of the requirements can be _____ obtained _____ at <https://www.eatrightpro.org/about-us/what-is-an-rdn-and-dtr/what-is-a-nutrition-and-dietetics-technician-registered-at-no-cost>.

- ~~(31)~~(34) "Nutrition therapy" ranges from intervention and counseling on diet modification to administration of specialized nutrition therapies as determined necessary to manage a condition or treat illness or injury. Specialized nutrition therapies include supplementation with medical foods, enteral and parenteral nutrition. Nutrition therapy integrates information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.
- ~~(32)~~(35) "Observation bed" means a bed used for no more than 24-hours, to evaluate and determine the condition and disposition of a patient and is not considered a part of the hospital's licensed bed capacity.
- ~~(33)~~(36) "Patient" means any person receiving diagnostic or medical services at a hospital.
- ~~(34)~~(37) "Pharmacist" means a ~~person licensed according to G.S. 90, Article 4A, by the N.C. Board of Pharmacy to practice pharmacy. as defined in G.S. 90-85.3.~~
- ~~(35)~~(38) "Physical Rehabilitation Services" means any combination of physical therapy, occupational therapy, speech ~~therapy~~ therapy, or vocational rehabilitation.
- ~~(36)~~(39) "Physician" means a ~~person licensed according to G.S. 90, Article 1, by the N.C. Board of Medical Examiners to practice medicine. as defined in G.S.90-9.1 or G.S. 90-9.2.~~
- ~~(37)~~(40) "Provisional license" means a hospital license recognizing ~~significantly~~ less than full compliance with the licensure rules.
- ~~(38)~~(41) "Qualified" means having complied with the specific conditions for employment or the performance of a function.
- ~~(39)~~(42) "Reference" means to use in consultation to obtain information.
- ~~(40)~~(43) "Special Care Unit" means a ~~designated unit or area of a hospital with a concentration of qualified professional staff and support services that provide intensive or extra-ordinary care on a 24 hour basis to critically ill patients; these units may include but are not limited to Cardiac Care, Medical or Surgical Intensive Care Unit, Cardiothoracic Intensive Care Unit, Burn Intensive Care Unit, Neurologic Intensive Care Unit or Pediatric Intensive Care Unit. that includes a critical care unit, an intermediate care unit, or a pediatric care unit.~~
- ~~(41)~~(44) "Unit" means a designated area of the hospital for the delivery of patient care services.

Authority G.S. 131E-79.

SECTION .3100 - PROCEDURE

10A NCAC 13B .3101 GENERAL REQUIREMENTS

- (a) An application for licensure shall be submitted to the Division prior to a license being issued or patients admitted.
- (b) An existing facility shall not sell, ~~lease~~ lease, or subdivide a portion of its bed capacity without the approval of the Division.
- (c) Application forms may be obtained by contacting the Division.
- (d) The Division shall be notified in writing 30 days prior to the occurrence of any of the following:
 - (1) addition or deletion of a licensable service;
 - (2) increase or decrease in bed capacity;
 - (3) change of chief executive officer;
 - (4) change of mailing address;
 - (5) ownership change; or
 - (6) name change.
- (e) Each application shall contain the following information:
 - (1) legal identity of applicant;
 - (2) name or names ~~under which used to present the hospital or services are presented~~ to the public;
 - (3) name of the chief executive officer;
 - (4) ownership disclosure;
 - (5) bed complement;
 - (6) bed utilization data;
 - (7) accreditation data;
 - (8) physical plant inspection data; and
 - (9) service data.
- (f) A license shall include only facilities or premises within a single county.

Authority G.S. 131E-79.

10A NCAC 13B .3110 ITEMIZED CHARGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .3200 - GENERAL HOSPITAL REQUIREMENTS

10A NCAC 13B .3204 TRANSFER AGREEMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 13B .3205 DISCHARGE OF MINOR OR INCOMPETENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .3300 - PATIENT'S BILL OF RIGHTS

10A NCAC 13B .3302 MINIMUM PROVISIONS OF PATIENT'S BILL OF RIGHTS

This Rule does not apply to patients in licensed nursing facility beds since these individuals are granted rights pursuant to G.S. 131E-117. A patient in a facility subject to this Rule has the following rights:

- (1) A patient has the right to respectful care given by competent personnel.
- (2) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his or her care, and the names

- and functions of other health care persons having direct contact with the patient.
- (3) A patient has the right to privacy concerning his or her own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and shall be conducted discreetly.
- (4) ~~A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.~~
- (5)(4) A patient has the right to know what facility rules and regulations apply to his or her conduct as a patient.
- (6)(5) A patient has the right to expect emergency procedures to be implemented without ~~unnecessary~~ delay.
- (7)(6) A patient has the right to ~~good~~ quality care and ~~high~~ professional standards that are ~~continually~~ maintained and reviewed.
- (8)(7) A patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to give such information to the patient, the information shall be given on his or her behalf to the patient's designee.
- (9)(8) Except for emergencies, a physician must obtain ~~necessary~~ informed consent prior to the start of any procedure or ~~treatment, or both~~ treatment.
- (10)(9) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent ~~must~~ shall be obtained prior to ~~actual~~ participation in such a ~~program and the program. The~~ patient or legally responsible party, ~~may, at any time, party may~~ refuse to continue in any such program to which that he or she has previously given informed consent. An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in ~~accord~~ accordance with federal regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56. For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" ~~in which that~~ waives informed consent is ~~waived~~ but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study

shall also ~~must~~ verify that the proposed research study has been registered with the North Carolina Medical Care Commission. When the IRB ~~reviewing the research study~~ has authorized the start of the community consultation process required ~~by the federal regulations~~ for emergency research, but before the beginning of that process, notice of the proposed research study ~~by the facility~~ shall be provided to the North Carolina Medical Care Commission. The notice shall include:

- (a) the title of the research study;
- (b) a description of the research study, including a description of the population to be enrolled;
- (c) a description of the planned community consultation process, including ~~currently~~ proposed meeting dates and times;
- (d) ~~an explanation of the way that people choosing not to participate in~~ instructions for opting out of the research study may opt out; ~~study;~~ and
- (e) contact information including mailing address and phone number for the IRB and the principal investigator.

The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the institution proposing to conduct the research study to attend a public meeting convened by a Medical Care Commission member in the community where the proposed research study is to take place to present and discuss the study or the community consultation process proposed.

- (11)(10) A patient has the right to refuse any drugs, treatment or procedure offered by the facility, to the extent permitted by law, and a physician shall inform the patient of his or her right to refuse any drugs, treatment or procedures and of the medical consequences of the patient's refusal of any drugs, treatment or procedure.
- (12)(11) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and expense.
- (13)(12) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual orientation, gender identity, national origin or source of payment.
- (14)(13) A patient who does not speak English shall have ~~access, when possible,~~ access to an interpreter.
- (15)(14) ~~A facility shall provide a patient, or patient designee, upon request, access to all information contained in the patient's medical records. A patient or his or her designee has the right to have all records pertaining to his or her medical care treated as confidential except as~~

otherwise provided by law or third party contractual arrangements. A patient's access to medical records may be restricted by the patient's attending physician. If the physician restricts the patient's access to information in the patient's medical record, the physician shall record the reasons on the patient's medical record. Access shall be restricted only for sound medical reason. A patient's designee may have access to the information in the patient's medical records even if the attending physician restricts the patient's access to those records.

- (16)(15) A patient has the right not to be awakened by hospital staff unless it is medically necessary.
- (17)(16) The patient has the right to be free from duplication of medical and nursing procedures as determined by the attending physician.
- (18)(17) The patient has the right to medical and nursing treatment that avoids unnecessary physical and mental discomfort.
- (19)(18) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The facility ~~to which~~ that the patient is to be transferred must first have accepted the patient for transfer.
- (20)(19) The patient has the right to examine and receive a detailed explanation of his bill.
- (21)(20) The patient has a right to full information and counseling on the availability of known financial resources for his health care.
- (22)(21) A patient has the right to be informed upon discharge of his or her continuing health care requirements following discharge and the means for meeting them.
- (23)(22) A patient shall not be denied the right of access to an individual or agency who is authorized to act on his or her behalf to assert or protect the rights set out in this Section.
- (24)(23) A patient has the right to be informed of his rights at the earliest possible time in the course of his or her hospitalization.
- (25)(24) A patient has the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient.

Authority G.S. 131E-75; 131E-79; 143B-165.

10A NCAC 13B .3303 PROCEDURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .5400 - COMPREHENSIVE INPATIENT REHABILITATION

10A NCAC 13B .5412 ADDITIONAL REQUIREMENTS FOR TRAUMATIC BRAIN INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons patients with traumatic brain injuries shall meet the requirements in this Rule in addition to those identified in this Section. provide staff to meet the needs of patients in accordance with the patient assessment, treatment plan, and physician orders.

- (1) ~~Direct care nursing personnel staffing ratios established in Rule .5408 of this Section shall not be applied to nursing services for traumatic brain injury patients in the inpatient, rehabilitation facility or unit. The minimum nursing hours per traumatic brain injury patient in the unit shall be 6.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which shall be a registered nurse.~~
- (2) ~~The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.5 hours of specific or combined rehabilitation therapy services per traumatic brain injury patient day.~~
- (3)(1) ~~The facility shall provide special facility or have access to special equipment to meet the needs for patients of patients with traumatic brain injury, including specially designed wheelchairs, tilt tables and standing tables. injury.~~
- (4) ~~The medical director of an inpatient traumatic brain injury program shall have two years management in a brain injury program, one of which may be in a clinical fellowship program and board eligibility or certification in the medical specialty of the physician's training.~~
- (5)(2) ~~The facility shall provide the consulting services of a neuropsychologist.~~
- (6)(3) ~~The facility shall provide continuing education in the care and treatment of brain injury patients for all staff.~~
- (7)(4) ~~The size of the brain injury program shall be adequate to support a comprehensive, dedicated ongoing brain injury program.~~

Authority G.S. 131E-79.

10A NCAC 13B .5413 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons patients with spinal cord injuries shall meet the requirements in this Rule in addition to those identified in this Section. provide staff to meet the needs of patients in accordance with the patient assessment, treatment plan, and physician orders.

- (1) ~~Direct care nursing personnel staffing ratios established in Rule .5408 of this Section shall not be applied to nursing services for spinal cord injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient~~

day. At no time shall direct care nursing staff be less than two full time equivalents, one of which shall be a registered nurse.

- (2) ~~The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.~~
- (3)(1) ~~The facility shall provide special facility or have access to special equipment to meet the needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables. injury.~~
- (4) ~~The medical director of an inpatient spinal cord injury program shall have either two years experience in the medical care of persons with spinal cord injuries or six months minimum in a spinal cord injury fellowship.~~
- (5)(2) ~~The facility shall provide continuing education in the care and treatment of spinal cord injury patients for all staff.~~
- (6)(3) ~~The facility shall provide specific staff training and education in the care and treatment of spinal cord injury.~~
- (7)(4) ~~The size of the spinal cord injury program shall be adequate to support a comprehensive, dedicated ongoing spinal cord injury program.~~

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapters 10A NCAC 13F, Licensing of Adult Care Homes of Seven or More Beds, and 10A NCAC 13G, Licensing of Family Care Homes, six proposed readoption rules were part of the 97 total rules determined as "Necessary With Substantive Public Interest," requiring readoption. With input from stakeholders, substantive changes have been proposed to four rules for readoption and four rules proposed for amendment to update the process that has been followed in the regulation of licensed Adult Care Homes and Family Care Homes in N.C. Most of the rules for both types of assisted living residences, adult care homes of seven beds or more and family care homes, are the same with the primary exception of staffing and physical plant requirements since they serve the same population based on need for care and services. Therefore, the 10A NCAC 13F rules are being proposed for amendment concurrently that correspond to the 10A NCAC 13G rules being proposed for readoption with substantive changes to assure this traditional consistency. Rules 10A NCAC 13F .0209 and 10A NCAC 13G .0209 are not necessary because the requirements of the rules have been incorporated into other rules proposed for amendment in the Subchapter, therefore they are proposed for readoption as a repeal. Rule 10A NCAC 13G .0213 is not necessary and is proposed for readoption as a repeal because G.S. 150B-22 and G.S. 150B-23 govern the criteria for requirements in the Rule.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: November 15, 2019

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

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

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

Authority G.S. 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to amend the rules cited as 10A NCAC 13F .0202, .0204, .0208, .0212, repeal the rule cited as 10A NCAC 13F .0209, readopt with substantive changes the rules cited as 10A NCAC 13G .0202, .0204, .0208, .0212, and repeal through readoption the rules cited as 10A NCAC 13G .0209 and .0213.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://info.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: October 30, 2019

Time: 1:00 p.m.

Location: Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F – LICENSING OF ADULT CARE HOMES OF SEVEN OR MORE BEDS

SECTION .0200 – LICENSING

10A NCAC 13F .0202 THE LICENSE

(a) Except as otherwise provided in ~~Rule .0203 of this Section, G.S. 131D-2.4,~~ the Department shall issue an adult care home license to any person who submits the application material according to Rule .0204 of this Section and the Department determines that the applicant complies with the provisions of all ~~applicable~~ State adult care home licensure statutes and ~~rules, rules of this Subchapter.~~ All applications for a new license shall disclose the names of individuals who are co-owners, partners, or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.
(b) The license shall be conspicuously posted in a public place in the home.
(c) When a provisional license is ~~issued,~~ issued according to G.S. 131D-2.7, the administrator shall post the provisional license and a copy of the notice from the Division of Health Service Regulation identifying the reasons for it, conspicuously in a public place in the home and in place of the full license.
(d) The license is not transferable or assignable.
(e) An adult care home shall be licensed only as an adult care home and not for any other level of care or licensable entity or service. The license shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and adult care home level of care.

Authority G.S. 131D-2.4; 131D-2.7; 131D-2.16; 131D-4.5; 143B-165.

10A NCAC 13F .0204 APPLYING FOR A LICENSE TO OPERATE A FACILITY NOT CURRENTLY LICENSED

(a) Prior to submission of a license application, all Certificate of Need requirements shall be met according to G.S. 131E, Article 9.
(b) In applying for a license to operate an adult care home to be constructed or ~~renovated~~ renovated, or in an existing building that is not currently licensed, the applicant shall submit the following to the Division of Health Service Regulation:

- (1) the Initial License Application ~~which that~~ is available ~~on the internet website, online at http://facility-services.state.nc.us/gepage.htm https://info.ncdhhs.gov/dhsr/acls/pdf/fcchgapp.pdf at no cost and includes the following: or the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708;~~
(A) contact person, facility site and mailing addresses, and administrator;
(B) operation disclosure including names and contact information of the licensee, management company, and building owner;

- (C) ownership disclosure including names and contact information of owners, principals, affiliates, shareholders, and members; and
(D) bed capacity including that of any special care unit for Alzheimer's and Related Disorders;

- (2) plans and specifications as required in Section .0300 of this Subchapter and a construction review fee according to ~~G.S. 131E-267; G.S. 131E-267 to be calculated and invoiced by the DHSR Construction Section;~~
(3) an approved fire and building safety inspection report from the local fire marshal to be submitted upon completion of construction or renovation;
(4) an approved sanitation report or a copy of the permit to begin operation from the sanitation division of the county health department to be submitted upon completion of construction or renovation;
(5) a nonrefundable license fee as required by ~~G.S. 131D-2(b)(4); G.S. 131D-2.5;~~ and
(6) a certificate of occupancy or certification of compliance from the local building official to be submitted upon completion of construction or renovation.

Note: Rule .0207 of this Section applies to obtaining a license to operate a currently licensed facility.

(c) ~~A pre licensing survey shall be made by program consultants of the Division of Health Service Regulation and an adult home specialist of the county department of social services. Issuance of an adult care home license shall be based on the following:~~

- (1) successful completion and approval of Subparagraphs (b)(1) through (b)(6) of this Rule;
(2) the Division of Health Service Regulation's Construction Section's recommendation of licensure based on compliance with rules in Section .0300 of this Subchapter;
(3) a compliance history review of the facility and its principals and affiliates according to G.S. 131D-2.4;
(4) approval by the Adult Care Licensure Section of the facility's operational policies and procedures based on compliance with the rules of this Subchapter; and
(5) the facility's demonstration of compliance with Adult Care Home statutes and rules of this Subchapter as determined by a pre-licensing survey of the facility by the Adult Care Licensure Section.

(d) ~~The Division of Health Service Regulation shall provide to the applicant written notification of the decision to license or not to license the adult care home. The Adult Care Licensure Section shall notify in writing the applicant licensee and the county department of social services of the decision to license or not to license the adult care home based on compliance with adult care~~

home statutes and the rules of this Subchapter within 14 days from the decision to license or not to license the facility.

Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165.

10A NCAC 13F .0208 RENEWAL OF LICENSE

(a) ~~The license shall be renewed annually, licensee shall file a license renewal application annually on a calendar year basis except as otherwise provided in Rule .0209 of this Subchapter, if the licensee submits an application for renewal on the forms provided by the Department at no cost with a nonrefundable annual license fee according to G.S. 131D-2(b)(1) and the Department determines that the licensee complies with the provisions of all applicable State adult care home licensure statutes and rules. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of license, the Department shall either approve a continuation or extension of a plan of correction, issue a provisional license, or revoke the license. G.S. 131D-2.5. The renewal application form includes the following:~~

- (1) ~~contact person, facility site and mailing address, and administrator;~~
- (2) ~~operation disclosure including names and contact information of the licensee, management company, and building owner;~~
- (3) ~~ownership disclosure including names and contact information of owners, principals, affiliates, shareholders, and members holding an ownership or controlling interest of five percent or more of the applicant entity;~~
- (4) ~~bed capacity including that of any special care unit for Alzheimer's and Related Disorders; and~~
- (5) ~~population and census data.~~

~~(b) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.~~

~~(b) In determining whether to renew a license under G.S. 131D-2.4, the Department shall take into consideration at least the following:~~

- (1) ~~the compliance history of the applicant facility with the provisions of all State adult care home licensure statutes and rules of this Subchapter;~~
- (2) ~~the compliance history of the owners, principals, and affiliates of the applicant facility in operating other adult care homes in the State;~~
- (3) ~~the extent to which the conduct of a related facility, its owners, principals, and affiliates is likely to affect the quality of care at the applicant facility; and~~
- (4) ~~the hardship on residents of the applicant facility if the license is not renewed.~~

~~(c) When violations of licensure rules or statutes are documented by the Department and have not been corrected by the facility prior to license expiration, the Department shall either approve a continuation or extension of a plan of correction, issue a provisional license, or deny the license.~~

Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165.

10A NCAC 13F .0209 CONDITIONS FOR LICENSE RENEWAL

Authority G.S. 131D-2.4; 131D-2.16; 143B-165.

10A NCAC 13F .0212 DENIAL OR REVOCATION OF LICENSE

(a) A license may be denied by the Division of Health Service Regulation for failure to comply with the rules of this Subchapter.

(b) Denial of a license by the Division of Health Service Regulation shall be effected by mailing to the ~~applicant, applicant licensee,~~ by registered mail, a notice setting forth the particular reasons for such action.

(c) A license may be revoked by the Division of Health Service Regulation in accordance with ~~G.S. 131D-2(b)~~ G.S. 131D-2.7(b) and G.S. 131D-29.

(d) When a facility receives a notice of revocation, the administrator shall inform each resident and the resident's responsible person in writing of the notice and the basis on which it was ~~issued.~~ issued within five calendar days of the notice of revocation being received by the licensee of the facility.

Authority G.S. 131D-2.7; 131D-2.16; 131D-4.3; 131D-29; 143B-165.

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .0200 - LICENSING

10A NCAC 13G .0202 THE LICENSE

~~(a) Except as otherwise provided in Rule .0203 of this Subchapter, G.S. 131D-2.4, the Department of Health and Human Services shall issue a family care home license to any person who submits an application on the forms provided by the Department with a non-refundable license fee as required by G.S. 131D-2(b)(4) the application material according to Rule .0204 of this Section and the Department determines that the applicant complies with the provisions of all applicable State family care adult care home licensure statutes and rules. rules of this Subchapter. All applications for a new license shall disclose the names of individuals who are co-owners, partners, or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.~~

(b) The license shall be conspicuously posted in a public place in the home.

~~(c) The license shall be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or involuntarily terminated, or changed to provisional licensure status.~~

~~(d) A provisional license may be issued in accordance with G.S. 131D-2(b).~~

~~(e)~~(c) When a provisional license is ~~issued,~~ issued according to G.S. 131D-2.7, the administrator shall post the provisional license and a copy of the notice from the Division of Health Service Regulation identifying the reasons for it, conspicuously in a public place in the home in place of the full license.

~~(f)~~(d) The license is not transferable or assignable.

~~(g)~~(e) A family care home shall be licensed only as a family care home and not for any other level of care or licensable entity or

service. The license shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and family care home level of care.

Authority *G.S. 131D-2.4; 131D-2.7; 131D-2.16; 131D-4.5; 143B-165.*

10A NCAC 13G .0204 APPLYING FOR A LICENSE TO OPERATE A HOME NOT CURRENTLY LICENSED

(a) An application for a license to operate a family care home for adults in an existing building where no alterations are necessary as determined by the Construction Section of the Division of Health Service Regulation or a family care home ~~which that~~ is to be constructed, added ~~to~~ to, or renovated shall be made at the county department of social ~~services~~ services in the county where the licensed family care home will be located.

~~(b) If during the study of the administrator and the home, it does not appear that the qualifications of the administrator or requirements for the home can be met, the county department of social services shall so inform the applicant, indicating in writing the reason and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application shall be completed and submitted to the Division of Health Service Regulation for consideration.~~

~~(c)(b) The applicant shall submit the following forms and reports through material to the county department of social services for submission to the Division of Health Service Regulation: Regulation within ten business days of receipt by the county department of social services:~~

- (1) the Initial Licensure Application; Application that is available online at <https://info.ncdhs.gov/dhsr/acls/pdf/acchgapp.pdf> at no cost and includes the following:
 - (A) contact person, facility site and mailing addresses, and administrator;
 - (B) operation disclosure including names and contact information of licensee, management company, and building owner;
 - (C) ownership disclosure including names and contact information of owners, principals, affiliates, shareholders, and members; and
 - (D) bed capacity;
- (2) an approval letter from the local zoning jurisdiction for the proposed location;
- (3) a photograph of each side of the existing structure and at least one of each of the interior spaces if an existing structure;
- (4) a set of blueprints or a floor plan of each level indicating the following:
 - (A) the layout of all ~~rooms;~~ rooms;
 - (B) the room dimensions (including closets); closets);
 - (C) the door widths (exterior, bedroom, ~~bathroom~~ bathroom, and kitchen ~~doors);~~ doors);
 - (D) the window sizes and window sill heights; heights;

- (E) the type of ~~construction;~~ construction;
- (F) the use of the basement and ~~attic;~~ attic; and
- (G) the proposed resident bedroom locations including the number of occupants and the bedroom and number (including the ages) of any non-resident who will be residing within the home;

- (5) a cover letter ~~or transmittal form~~ prepared by the adult home specialist of the county department of social services identifying stating the following:
 - (A) the prospective home site address; address;
 - (B) the name of the contact person (including address, telephone numbers, ~~fax numbers);~~ email address); and
 - (C) the name and address of the applicant (if different from the contact person) and the total number and the expected evacuation capability of the residents; person); and
- (6) ~~a construction review fee according to G.S. 131E-267. a non-refundable license fee as required by G.S. 131D-2.5.~~

~~(d) The Construction Section of the Division of Health Service Regulation shall review the information and notify the applicant and the county department of social services of any required changes that must be made to the building to meet the rules in Section .0300 of this Subchapter along with the North Carolina State Building Code. At the end of the letter there shall be a list of final documentation required from the local jurisdiction that must be submitted upon completion of any required changes to the building or completion of construction.~~

~~(e) Any changes to be made during construction that were not proposed during the initial review shall require the approval of the Construction Section to assure that licensing requirements are maintained.~~

~~(f) Upon receipt of the required final documentation from the local jurisdiction, the Construction Section shall review the information and may either make an on site visit or approve the home for construction by documentation. If all items are met, the Construction Section shall notify the Adult Care Licensure Section of the Division of Health Service Regulation of its recommendation for licensure.~~

~~(g) Following review of the application, references, all forms and the Construction Section's recommendation for licensure, a pre-licensing visit shall be made by a consultant of the Adult Care Licensure Section. The consultant shall report findings to the Division of Health Service Regulation which shall notify, in writing, the applicant and the county department of social services of the decision to license or not to license the family care home.~~

- (c) Issuance of a family care home license shall be based on the following:
- (1) successful completion and approval of Subparagraphs (b)(1) through (b)(6) of this Rule;

- (2) the Division of Health Service Regulation's Construction Section's recommendation of licensure based on compliance with rules in Section .0300 of this Subchapter;
- (3) a compliance history review of the facility and its principals and affiliates according to G.S. 131D-2.4;
- (4) approval by the Adult Care Licensure Section of the facility's operational policies and procedures based on compliance with the rules of this Subchapter; and
- (5) the facility's demonstration of compliance with Adult Care Home statutes and rules of this Subchapter as determined by a pre-licensing survey of the facility by the Adult Care Licensure Section.

- (1) the compliance history of the applicant facility with the provisions of all State adult care home licensure statutes and rules of this Subchapter;
- (2) the compliance history of the owners, principals and affiliates of the applicant facility in operating other adult care homes in the State;
- (3) the extent to which the conduct of a related facility, its owners, principals, and affiliates is likely to affect the quality of care at the applicant facility; and
- (4) the hardship on residents of the applicant facility if the license is not renewed.

(d) The Adult Care Licensure Section shall notify in writing the applicant licensee and the county department of social services of the decision to license or not to license the adult care home based on compliance with adult care home statutes and the rules of this Subchapter within 14 days from the decision to license or not to license the facility.

(c) When violations of licensure rules or statutes are documented by the Department and have not been corrected by the facility prior to license expiration, the Department shall either approve a continuation or extension of a plan of correction, issue a provisional license, or deny the license.

Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165.

Authority G.S. 131D-2.4; 131D-2.16; 131D-4.5; 143B-165.

10A NCAC 13G .0208 RENEWAL OF LICENSE

~~(a) The license shall be renewed annually, licensee shall file a license renewal application annually on a calendar year basis except as otherwise provided in Rule .0209 of this Subchapter, if the licensee submits an application for renewal on the forms provided by the Department at no cost and the Department determines that the licensee complies with the provisions of all applicable State adult care home licensure statutes and rules. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of license, the Department shall either approve a continuation or extension of a plan of correction, issue a provisional license, or revoke the license for cause, with a nonrefundable annual license fee according to G.S. 131D-2.5. The renewal application includes the following:~~

10A NCAC 13G .0209 CONDITIONS FOR LICENSE RENEWAL

Authority G.S. 131D-2.4; 131D-2.16; 131D-4.5; 143B-165.

10A NCAC 13G .0212 DENIAL AND REVOCATION OF LICENSE

- (a) A license may be denied by the Division of Health Service Regulation for failure to comply with the rules of this Subchapter.
- (b) Denial of a license by the Division of Health Service Regulation shall be effected by mailing to the applicant, applicant licensee, by registered mail, a notice setting forth the particular reasons for such action.
- (c) A license may be revoked by the Division of Health Service Regulation in accordance with ~~G.S. 131D-2(b)~~ G.S. 131D-2.7(b) and G.S. 131D-29.
- (d) When a facility receives a notice of revocation, the administrator shall inform each resident and ~~his~~ the resident's responsible person in writing of the notice and the basis on which it was ~~issued~~ issued within five calendar days of the notice of revocation being received by the licensee of the facility.

Authority G.S. 131D-2.7; 131D-2.16; 131D-4.3; 131D-29; 143B-165.

10A NCAC 13G .0213 APPEAL OF LICENSURE ACTION

Authority 131D-2.4; 131D-2.16; 143B-165; 150B-23.

- (1) contact person, facility site and mailing address, and administrator;
- (2) operation disclosure including names and contact information of the licensee, management company, and building owner;
- (3) ownership disclosure including names and contact information of owners, principals, affiliates, shareholders, and members holding an ownership or controlling interest of five percent or more of the applicant entity;
- (4) bed capacity; and
- (5) population and census data.

~~(b) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of 5% or more of the applicant entity.~~

(b) In determining whether to renew a license under G.S. 131D-2.4, the Department shall take into consideration at least the following:

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 09B .0314 and amend the rule cited as 12 NCAC 09B .0302.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdoj.gov/getdoc/1d3d0430-a32c-4878-8757-39fffedc474a/Public-Hearing-November-2019.aspx>

Proposed Effective Date: February 1, 2020

Public Hearing:

Date: November 20, 2019

Time: 10:00 a.m.

Location: Wake Technical Community College Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27603

Reason for Proposed Action: Specify the requirements for out-of-state applicants for General Instructor Certification. Specify the certification requirements for Diversion Investigators and Supervisors.

Comments may be submitted to: Charminique D. Williams, PO Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; email cdwilliams@ncdoj.gov

Comment period ends: November 20, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) A General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of General Probationary Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
(A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; and
(B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency;
(2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course, course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
(3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for General Probationary Instructor Certification shall be submitted to the Standards Division within 60 sixty days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program. program or an equivalent instructor training course use the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission accredited instructor training course or an equivalent instructor training course using the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.

(c) Persons having completed a Commission-accredited training course and not having submitted the application within 60 days of the date the applicant passed the state comprehensive examination shall complete a subsequent Commission-accredited instructor training course in its entirety.

(d) Out-of-State applicants having completed an equivalent instructor training course and who are certified or have been certified within two years prior to the submission of application to the Standards Division as an instructor in a Criminal Justice Program, as verified by the respective State Police Officer Standards and Training (POST) or Federal Law Enforcement Training Center (FLEC) or military POST organization, are eligible to apply for Probationary Instructor Certification upon achieving a passing score of 75 percent on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter. The application shall be submitted to the Standards Division within sixty days of the date the applicant passed the state comprehensive examination.

(e) The Standards Division staff shall evaluate the out-of-state applicant's combined training and experience to determine if the combined training and experience is substantially equivalent to or exceeds the requirements for Probationary Instructor certification as prescribed in Subparagraphs (a)(1)-(2) of this Rule and includes course topics in instructional leadership, liability, teaching adults, presentation styles and written lesson plan preparation.

(f) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.

Authority G.S. 17C-6.

12 NCAC 09B .0314 CERTIFICATION OF DIVERSION INVESTIGATORS AND SUPERVISORS

(a) The diversion training courses for investigators and supervisors shall be designed to provide the trainee with the skills and knowledge to proficiently perform the duties of a law enforcement Diversion Investigator or Supervisor. The diversion training course for investigators shall be 24 classroom hours. The diversion training course for supervisors shall be administered in a four hour online training course. To be certified as a Diversion Investigator or Diversion Supervisor he or she shall complete the respective diversion training course and achieve a minimum score of 70 percent on the comprehensive written (Investigator) or online (Supervisor) examination.

(b) Only a Sheriff, deputy sheriff, or law enforcement officer certified or appointed through the North Carolina Criminal Justice Education and Training Standards or North Carolina Sheriff Education and Training Standards Commissions and employed by a law enforcement agency shall be enrolled in a diversion training course. Such a trainee shall not be certified as a Diversion Investigator or Diversion Supervisor until the Basic Law Enforcement Training course, pursuant to Rule .0205 of this Subchapter, has been completed with passing scores and probationary or general law enforcement certification has been granted. Sheriffs and appointed deputy sheriffs shall be allowed to participate in the diversion training courses on a space available basis at the discretion of the Diversion Training Course School Director without having enrolled in, or having completed with passing scores, the Basic Law Enforcement Training course.

pursuant to Rules .0205 and .0206 of this Subchapter and without being currently certified in a probationary status or holding justice officer certification.

(c) Those Special Agents with the North Carolina State Bureau of Investigation previously deemed Diversion Investigators as of July 1, 2019, shall be automatically granted certification under this Rule for a period of three years.

(d) The "Diversion Training Courses" required for certification, authored by the North Carolina State Bureau of Investigation and published by the North Carolina Justice Academy, shall include the topic areas as outlined in G.S. 17C-6(a)(19) and is to be applied as the basic curriculum for the Diversion Training Courses for Diversion Investigator and Diversion Supervisors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tyron Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6; 17E-4, 90-113.74E.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 09E .0105.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdoj.gov/getdoc/1d3d0430-a32c-4878-8757-39fffedc474a/Public-Hearing-November-2019.aspx>

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: November 20, 2019

Time: 10:00 a.m.

Location: Wake Technical Community College Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27603

Reason for Proposed Action: To provide the in-service training topics in an In-Service Training Manual.

Comments may be submitted to: Charminique D. Williams, PO Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; email cdwilliams@ncdoj.gov

Comment period ends: November 20, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)

from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) ~~The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. Specific topics identified in the Annual In-Service Manual and approved by the North Carolina Criminal Justice Education and Training Standards Commission shall be as published by the North Carolina Department of Justice, Incorporated herein by reference, and shall include any later amendments and editions of the incorporated materials as provided by G.S. 150B-21.6. The publication shall be available from the Commission's website at <https://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>. The following topics, totaling 18 credits, shall be specifically required:~~

- ~~(1) 2020 Firearms Training and Qualification (4 credits);~~
- ~~(2) 2020 Legal Update (4 credits);~~
- ~~(3) 2020 Long Term Effects of Childhood Adversity (2 credits);~~
- ~~(4) 2020 The Signs Within: Suicide Prevention Education and Awareness (2 credits);~~
- ~~(5) 2020 Career Survival: Training and Standards Issues (2 credits);~~
- ~~(6) 2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing (2 credits);~~

- ~~(7) 2020 Armed/Unarmed Security/Company Police: Understanding Their Roles and Authority (2 credits);~~
- ~~(8) Topics of Choice (12 credits);~~
 - ~~(A) Hazardous Materials (2 credits);~~
 - ~~(B) Bloodborne Pathogens (2 credits);~~
 - ~~(C) Situational Awareness/Subject Control (4 credits); and~~
 - ~~(D) Law enforcement Threat Assessment (4 credits);~~

~~(b) All sworn law enforcement officers shall complete a minimum of 6 in-service credits, in topics identified by their respective agency heads. It is possible for a training topic other than the specific topics identified in the Annual In-Service Training Manual to qualify for credit towards officers' Annual In-Service Training requirement. A Department Head The agency head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section and National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year, shall satisfy in part or in whole the topic requirements set forth by the agency department head. To satisfy this requirement these topics shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.~~

~~(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:~~

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

~~and may be obtained at the cost of printing and postage from the Academy at the following address:~~

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

~~(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:~~

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

~~and may be obtained at the cost of printing and postage from the Academy at the following address:~~

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

~~(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.~~

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length shall include a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
(2) A student shall pass each test by achieving at least 70 percent correct answers; and
(3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

Authority G.S. 17C-6; 17C-10.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rule cited as 14B NCAC 15B .1004.

Link to agency website pursuant to G.S. 150B-19.1(c): https://abc.nc.gov/

Proposed Effective Date: February 1, 2020

Public Hearing:

Date: November 13, 2019

Time: 10:00 a.m.

Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: To adopt a permanent rule to increase the maximum allowable rebate an ABC retail permittee may offer on malt beverages or wine through the use of a coupon, rebate, loyalty card, discount card, or membership card from 25% to 35%, as directed by the General Assembly in S.L. 2019-182, Sec. 11.

Comments may be submitted to: Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 779-8367; email walker.reagan@abc.nc.gov

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules

Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .1000 - ADVERTISING

14B NCAC 15B .1004 GENERAL PROHIBITIONS

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

- (1) "Coupon" means a part of a retail permittee's advertisement that is redeemed by a purchaser to the retail permittee to obtain a discount at the time of sale;
(2) "Loyalty card, discount card, or membership card" means a card that is issued by a retail permittee to customers that, upon presentation to the retail permittee, provides for the purchaser to receive a loyalty card, discount card, membership card, or coupon discount on a portion of the amount paid by the purchaser for off-premises beer or wine consumption sales at the time of sale; and
(3) "Rebate" for a retail permittee, means a promise by the retail permittee to return a portion of the amount paid by the purchaser upon the condition the purchaser completes a rebate form and the purchaser meets the terms and conditions of the rebate form's requirements.

(b) Advertising for an alcoholic beverage shall not include a coupon or an offer for a free alcoholic beverage. No person shall advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card offering a discount off the purchase of a malt beverage or wine, except as provided in this section. A combination of the use of a coupon, a rebate or a

permittee's loyalty card, discount card or membership card shall not exceed a total of ~~25~~ 35 percent of the advertised retail price of the item. Permittees may advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card under the following conditions:

- (1) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon or a rebate in the following circumstances:
 - (A) The permittee may provide a coupon or a rebate for use by a customer when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
 - (B) The permittee may require a customer to use the permittee's loyalty card, discount card or membership card with the use of a coupon or rebate when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
 - (C) No coupons or rebates shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
 - (D) A coupon or rebate shall not provide a discount exceeding ~~25~~ 35 percent of the advertised retail price of the item;
 - (E) A permittee shall not advertise or distribute coupons or rebates in a publication produced for or by a higher education institution; and
 - (F) In any advertisement displaying a discount coupon or rebate, the permittee shall include the following statement on or about the discount coupon or rebate, "Drink Responsibly – Be 21;" and
- (2) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise discounts, coupons and rebates with the requirement of the use of the permittee's loyalty card, discount card or membership card in the following circumstances:
 - (A) The permittee shall require customers to present a loyalty card, discount card or membership card to receive the advertised loyalty card, discount card or membership card discount when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;

- (B) No loyalty card, discount card or membership card shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
- (C) A loyalty card, discount card or membership card shall not provide a discount exceeding ~~25~~ 35 percent of the advertised retail price of the item;
- (D) A permittee shall not advertise permittee loyalty card, discount card or membership card discounts in a publication produced for or by a higher education institution; and
- (E) In any advertisement displaying a permittee loyalty card, discount card or membership card discount, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount, "Drink Responsibly – Be 21."

Direct or indirect cooperation shall not occur between a retailer and an industry member in either marketing, redemption or funding of coupons, rebates or loyalty card, discount card or membership card discounts under this Rule. Participation of an industry member in the use of coupons, rebates or loyalty card, discount card or membership card discounts is a violation of G.S. 18B-1116(a)(3).

- (c) No industry member or retailer shall advertise alcoholic beverages in any programs for events or activities in connection with any elementary or secondary schools; nor shall any alcoholic beverages advertising be connected with these events when broadcast over radio or television.
- (d) No industry member or retailer is permitted to advertise alcoholic beverages by use of sound trucks.
- (e) No industry member or retailer shall advertise spirituous liquor upon the picture screen of any theater.
- (f) Except as otherwise provided in these Rules, no industry member or retailer shall promote an alcoholic beverage product by giving prizes, premiums or merchandise to individuals for which any purchase of alcoholic beverages is required or based on the return of empty containers unless all containers of like products are accepted and considered on an equal basis with the product sold by the promoter.
- (g) No on-premise permittee or his agent shall advertise any drink promotion prohibited by 14B NCAC 15B .0223. This Paragraph includes a ban on all advertisements of "2 for 1," "buy 1 get 1 free," "buy 1 get another for a _____(nickel, penny, etc.)," and any other similar statement indicating that a patron must buy more than one drink.

Authority G.S. 18B-100; 18B-105(b); 18B-207; 18B-1116(a)(3); S.L. 2019-182, s. 11.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0304 and .0305.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

Proposed Effective Date: February 1, 2020

Public Hearing:

Date: October 3, 2019

Time: 10:00 a.m.

Location: Northeast Library, 1241 Military Cutoff Road, Wilmington, NC 28405

Date: October 3, 2019

Time: 2:00 p.m.

Location: Southport Community Building, 223 E. Bay Street, Southport, NC 28461

Date: October 8, 2019

Time: 1:30 p.m.

Location: Ocracoke Volunteer Fire Department, 822 Irvin Garrish Highway, Ocracoke, NC 27960

Date: October 9, 2019

Time: 10:00 a.m.

Location: Nags Head Board of Commissioners Room, 5401 S. Croatan Hwy, Nags Head, NC 27959

Date: October 9, 2019

Time: 2:30 p.m.

Location: Outer Bank Center for Wildlife Education 1160 Village Lane, Corolla, NC 27927

Date: October 15, 2019

Time: 10:00 a.m.

Location: Surf City Welcome Center, 102 North Shore Drive, Surf City, NC 28445

Date: October 15, 2019

Time: 3:00 p.m.

Location: Sneads Ferry Library, 1330 Highway 210, Sneads Ferry, NC 28460

Date: October 17, 2019

Time: 3:00 p.m.

Location: NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557

Reason for Proposed Action: 15A NCAC 07H .0304 defines and establishes Areas of Environmental Concern (AECs) within the Ocean

Hazard Areas along the State's Atlantic Ocean shoreline. Ocean Hazard Area AECs include the Ocean

Erodible Area, Inlet Hazard Area and the Unvegetated Beach Area. 7H .0305 defines physical features of Ocean Hazard Areas.

The Coastal Resources Commission's proposed amendments to 15A NCAC 7H .0304 reflect the five-year update of the state's oceanfront erosion rates. Erosion rates are used to establish construction setbacks for development within the Ocean Erodible Area

– Areas of Environmental Concern (OEA-AEC).

Due to Hurricane Florence's impacts to the beaches of the Towns of Surf City and North Topsail Beach; the Coastal Resources Commission is proposing to amend its administrative rules in order to reflect physical changes in the ocean shoreline that influence the permitted citing of oceanfront development.

Comments may be submitted to: Braxton Davis, 400 Commerce Ave, Morehead City, NC 28557; phone (252) 808-2808

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative

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

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

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from

the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at ~~420~~ 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "~~2011 Long Term Average Annual Shoreline Rate Update~~" "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on ~~May 5, 2014~~ February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as ~~jetties~~ jetties, terminal groins, and channelization. The areas on the maps identified as ~~suggested~~ Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
- (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in

no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible

area. This report is available for inspection at the Department of Environmental Quality, Division

of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website

referenced in Item (1) of this Rule. Photocopies are available at no charge.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018. The designation AEC boundaries can be found on the Division's website referenced in Item (1) of this Rule. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 3(a) of this Rule.

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - (A) the growth of vegetation occurs; or
 - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the "dune trough.")
- (4) Frontal Dunes. The frontal dune is the first mound of sand located landward of the ocean beach that has stable and natural vegetation present.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be

established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the "static vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.
- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than 300,000 cubic yards or

any storm protection project constructed by the U.S. Army Corps of Engineers.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. ~~Procedures for determining the measurement line in areas designated pursuant to Rule .0304(3) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:~~

(A) determining the average distance the pre-storm vegetation line receded at the closest vegetated site ~~to the proposed development site; adjacent to the area designated by the Commission as the unvegetated beach AEC;~~ and

(B) ~~locating the line of stable and natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (a)(1) of this Rule. mapping a line equal to the average recession determination in (A), measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.~~

~~The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.~~

(10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule .0306(a)(2) of this Section.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Chiropractic Examiners intends to adopt the rules cited as 21 NCAC 10 .0215, .0706, .0708, .0709 and amend the rules cited as 21 NCAC 10 .0103, .0204, .0206, .0207, .0213, .0302, .0401, .0403, .0406, .0501, and .0503.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncchiroboard.com>

Proposed Effective Date: January 1, 2020

Public Hearing:

Date: October 3, 2019

Time: 6:00 p.m.

Location: 6070 Six Forks Road, Suite L, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 10 .0103 - Updates how the Board's Practice Act may be obtained, when nominee elections are held for appointments to the Board, and when elections for Board officers are held.

21 NCAC 10 .0204 - Updates how changes to contact information must be sent to the Board.

21 NCAC 10 .0206 - Updates the eligibility requirements for certification as a radiologic technologist and the associated education program requirements.

21 NCAC 10 .0207 - Updates how continuing education course applications must be submitted; updates duration of approval for said courses and adds the acceptance of PACE approved courses for CE credit.

21 NCAC 10 .0213 - Updates the Board's website URL and the manner in which certificates of clinical assistants must be displayed.

21 NCAC 10 .0215 - Implements procedure by which applicants can obtain a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining licensure.

21 NCAC 10 .0302 - Clarifies the types of prohibited advertising.

21 NCAC 10 .0401 - Updates the presiding officer over rule-making petitions.

- 21 NCAC 10 .0403 - Updates the manner in which rule-making notices may be shared with licensees.
- 21 NCAC 10 .0406 - Updates the officer to whom declaratory rulings must be submitted.
- 21 NCAC 10 .0501 - Updates the manner in which complaints are filed and eliminates different classification of complaints.
- 21 NCAC 10 .0503 - Updates the composition of the Chiropractic Review Committee and the actions available to the Committee at a probable cause hearing.
- 21 NCAC 10 .0706 - Implements procedure by which Board hearings shall be conducted.
- 21 NCAC 10 .0708 - Implements procedure by which continuances of Board hearings shall be handled.
- 21 NCAC 10 .0709 - Implements procedure by which subpoenas in Board hearings shall be handled.

Comments may be submitted to: Thomas R. Sullivan, NC State Board of Chiropractic Examiners, 6070 Six Forks Road, Suite L, Raleigh, NC 27609; phone (704) 793-1342 ext. 1004; fax (704) 793-1385; email tom@ncchiroboard.com

Comment period ends: November 15, 2019

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

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

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

SECTION .0100 – ORGANIZATION OF BOARD

21 NCAC 10 .0103 STRUCTURE OF BOARD

- (a) Creation and Membership of Board of Examiners. The creation and membership of the Board of Chiropractic Examiners are governed by G.S. 90-139, which statute is herewith incorporated by reference including subsequent amendments. A copy of the statute may be obtained ~~from the Board at no charge.~~ on the Board's website at <https://ncchiroboard.com>.
- (b) Selection of Chiropractic Members of Board of Examiners. The selection of chiropractic members of the Board of Examiners

is governed by G.S. 90-140, which statute is herewith incorporated by reference including subsequent amendments. A copy of the statute may be obtained ~~from the Board at no charge.~~ on the Board's website at <https://ncchiroboard.com>.

(c) Election of Candidates for Appointment to the Board. ~~Annually,~~ As necessary to meet the requirements of G.S. 90-140, the Board shall select a time, date and place for the election of chiropractic candidates for appointment to the Board. At least three candidates shall be elected for each vacancy. The candidate receiving the most votes in each election shall be given a special recommendation.

- (1) The election shall be conducted by the Board of Chiropractic Examiners. Any member of the Board who is nominated to succeed himself shall be disqualified from conducting the vote in which he is a nominee.
- (2) Nomination shall be made from the floor and shall require two seconds. Any prospective nominee may withdraw his or her name from consideration by an oral statement to that effect.

(d) Officers of the Board. ~~Annually, and as soon as practicable after appointments have been made, the members of the Board shall~~ When determined by a majority vote of the Board, officer elections will be held to elect a president, a vice-president, a secretary, and a ~~treasurer.~~ treasurer or any officer position that comes open due to termination of an appointment or resignation.

Authority G.S. 90-139; 90-140; 150B-14.

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0204 LICENSURE

- (a) Initial Licensure. The initial license awarded to an applicant who passed the examination shall be mailed to the address appearing on the application form.
- (b) Change of ~~Address.~~ Contact Information. It shall be the responsibility of the licentiate to inform the Board of any change in his or her ~~mailing address.~~ contact information. Updated ~~address~~ contact information shall be forwarded to the ~~secretary in writing~~ Board office email ncboce@ncchiroboard.com, by regular mail or fax within 30 days after any such change.
- (c) ~~Email and Facsimile.~~ A licentiate who maintains an office email address or office facsimile machine shall inform the Board of his or her current email address or facsimile machine telephone number. This contact information shall not be made available to the public and shall be used only for expediting the dissemination of official messages the Board deems high priority or urgent.

Authority G.S. 90-145; 90-148.

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

- (a) Application Procedure. After successful completion of the Certification of Clinical Assistants described in 12 NCAC 10 .0213 and completing the education program described in Paragraph (b) of this Rule, a person desiring certification as a radiologic technologist shall pass a competency examination administered by or under the authority of the Board. The applicant shall complete an application form available on the Board's

website, ~~www.ncchiroboard.com,~~ website at <https://ncchiroboard.com/x-ray-technician/>, and confirm and submit that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character.

(b) Approved Education Programs. In order to be approved by the Board, a radiological technologist education program shall be at least 50 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been ~~assigned.~~ assigned, and completion of the practical requirement as outlined on the Board's website at <https://ncchiroboard.com/x-ray-technician/>. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.2 to enable its graduates to satisfy all applicable standards of care governing the production of X-rays. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training and a curriculum vitae for each instructor.

(c) A.C.R.R.T. Exemption. Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (b) of this Rule.

(d) Competency Examination. The competency examination shall be administered in person at least three times per year. The Board shall publish on its website, ~~www.ncchiroboard.com,~~ <https://ncchiroboard.com/master-exam-calendar/>, the date, time, and location of the examination at least 90 days in advance. The Board may authorize additional testing sessions based on the number of applications received. The minimum passing score is 70 percent.

(e) Certificate Expiration and Renewal. A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. A radiologic technologist whose initial certificate expires less than 12 months after issuance shall not be required to obtain continuing education until the second calendar year of certification but shall be required to pay the renewal fee at the end of the initial year of certification. A radiologic technologist seeking to renew a certificate of competency shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay a renewal fee in

the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's ~~website,~~ [www.ncchiroboard.com,](https://ncchiroboard.com) <https://ncchiroboard.com>, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Displaying Certificate. The holder of a certificate issued pursuant to this Rule shall display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

(g) Compliance. Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

(h) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by demonstrating completion of six hours of Board-approved continuing education and paying the renewal fee set forth in Paragraph (e) of this Rule. If the lapse is greater than 60 days, no make-up continuing education shall be required but the certificate holder shall re-take and pass the competency examination described in Paragraph (d) of this Rule. ~~Rule and pay the initial certification fee set forth in Paragraph (a) of this Rule.~~ Regardless of the length of lapse, any person seeking reinstatement of a lapsed certificate shall comply with Paragraph (e) of this Rule.

Authority G.S. 90-143.2; 90-154.3.

21 NCAC 10 .0207 CONTINUING EDUCATION SEMINARS

(a) Approval of Seminars. Only continuing education seminars approved in advance by the Board shall count towards satisfying the requirements for license renewal. The sponsor and co-sponsors of any proposed seminar shall be responsible for submitting ~~to the Board~~ all the information outlined on the Board deems necessary Board's Course Application to enable the Board to evaluate the seminar in accordance with this Rule. The Board's Course Application can be found on, and must be submitted via, the Board's website at <https://ncchiroboard.com>. An application for approval shall be in writing and The Board's Course Application shall be submitted at least 30 days prior to the date of the proposed seminar. Incomplete applications will not be processed.

(b) Duration of Approval. A seminar approval issued by the Board shall expire ~~one year after the date of issuance.~~ at the end of the calendar year for which approved. If the sponsor or co-sponsors of an approved seminar wish to repeat the seminar on a date beyond the approval period, a new application shall be submitted to the Board.

(c) Criteria for Approval. The Board's criteria for approving continuing education seminars is as follows:

- (1) No practice-building or motivational seminars shall be approved;
- (2) No seminar shall be approved that requires attendees, in order to be able to utilize the information presented at the seminar, to

purchase equipment or clinical supplies available only through the seminar's instructors, sponsors or co-sponsors;

- (3) Each seminar subject shall fall within the extent and limitation of chiropractic licensure in this State; and
- (4) Each instructor shall submit a curriculum vitae and satisfy the Board that he is competent to teach the subject or subjects he is scheduled to teach.

(d) Duties of Seminar Sponsor. A proposed seminar having been approved by the Board, its sponsor and co-sponsors shall:

- (1) Disclose on all brochures and advertising materials the name and address of each sponsor and co-sponsor and whether each sponsor and co-sponsor is a for-profit or not-for-profit entity;
- (2) Be liable for all expenses incurred in holding the seminar;
- (3) Give timely notice to the Board of any material changes in the seminar, including date, location, subject matter or instructors; and
- (4) Provide an agent at the seminar site who shall:
 - (A) Monitor and report the attendance of each person attending the seminar, using a method approved by the Board;
 - (B) Provide for the safety and comfort of attendees;
 - (C) Supervise the agenda and ~~disallow~~ prohibit the presentation of any subject matter not approved by the Board; and
 - (D) Complete and submit to the Board a post-seminar review summarizing any problems experienced and any variance between the application for approval and the seminar as actually presented.

(e) Sanction for Non-Compliance. By applying for seminar approval, each sponsor and co-sponsor agrees to admit to the seminar at no charge a representative of the Board for the purpose of observing compliance with this Rule. If the Board determines that a sponsor or co-sponsor has willfully or negligently falsified the application for approval, or has failed to keep attendance accurately, or has allowed the seminar as actually presented to vary materially from the agenda as set forth in the application, or has willfully failed to adhere to any other provision of this Rule, the Board, in its discretion, may refuse to approve future seminar applications from the offending sponsor or co-sponsor or from any principal who is a partner or shareholder in the offending sponsor or co-sponsor.

(f) PACE Approved State. The Board accepts all doctor of chiropractic courses that have been approved by the Providers of Approved Continuing Education (PACE) program administered by the Federation of Chiropractic Licensing Boards (FCLB).

Authority G.S. 90-142; 90-155.

21 NCAC 10 .0213 CERTIFICATION OF CLINICAL ASSISTANTS

(a) Classification of Applicants. Applicants for clinical assistant competency certification shall be classified as follows. Different certification requirements shall apply to each category.

- (1) Reciprocity applicants. A "reciprocity applicant" means an applicant who is currently certified or registered as a clinical assistant in another state whose requirements for certification or registration are substantially similar to or more stringent than the requirements for certification in North Carolina.
- (2) New applicants. A "new applicant" means any applicant who is not a reciprocity applicant.

(b) Requirements for Certification. Every applicant, regardless of classification, shall complete an application form available on the Board's website (~~www.ncchiroboard.com~~) at <https://ncchiroboard.com> and requiring the applicant to confirm and submit documentary evidence satisfactory to the Board that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character. Every applicant, regardless of classification, shall pay to the Board an initial certification fee in the amount of twenty dollars (\$20.00). The initial certification fee shall not be paid in cash and may be paid by credit card through the Board's website, ~~www.ncchiroboard.com~~, website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners. In addition to the general certification requirements, an applicant shall satisfy the requirements for the appropriate category of certification, as follows:

- (1) Reciprocity Applicants. A reciprocity applicant shall submit a copy of the applicant's current certification or registration as a clinical assistant in a state with which North Carolina reciprocates and shall also submit written confirmation from the state's certifying authority or registrar that the applicant is in good standing in that state.
- (2) New Applicants. A new applicant shall submit evidence that the applicant has completed an approved clinical assistant education program as described in Paragraph (c) of this Rule. A certificate of completion filed with the Board by the program sponsor shall constitute prima facie evidence that the applicant has obtained the required education. A new applicant shall also take and pass the standard proficiency examination administered by or under the

authority of the Board, as described in Paragraph (d) of this Rule.

(c) Education Programs. In order to be approved by the Board, a clinical assistant education program for new applicants shall be at least 24 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been assigned. Credit for online coursework shall not exceed 18 hours, and all online coursework shall precede didactic training. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.4(c) to enable its graduates to satisfy all applicable standards of care. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training, and a curriculum vitae for each instructor.

(d) Examinations. The proficiency examination for new applicants shall assess both academic knowledge and practical skills acquired through education programs and shall be administered in person at least four times per year on dates and at locations to be announced by the Board at least 90 days in advance and published on the Board's website, ~~www.ncchiroboard.com~~ website at <https://ncchiroboard.com>. In its discretion, the Board may authorize additional testing sessions based on the number of applications received. The minimum passing score on the examination is 75 percent.

(e) Certificate Expiration and Renewal. Unless renewed, a certificate of competency shall expire on June 30th of the third year following the year in which it was issued. A certificate holder seeking to renew shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay to the Board a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, ~~www.ncchiroboard.com~~ website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by making up the accrued deficiency in continuing education. If the lapse is greater than 60 days, no make-up continuing education shall be required, but the certificate holder shall re-take and pass the proficiency examination for new applicants. Regardless of the length of lapse, a certificate holder seeking reinstatement shall pay the renewal fee set forth in Paragraph (e) of this Rule.

(g) Exemptions. Graduates of accredited chiropractic colleges and students enrolled in accredited chiropractic colleges who are serving college-sponsored preceptorships in North Carolina are deemed by the Board to have satisfied all requirements imposed by this Rule and shall be deemed competent to perform the duties of a clinical assistant. Any person who qualifies for exemption and who works as a clinical assistant in this state for more than 180 days shall submit the application form described in Paragraph

(b) of this Rule and note the claim of exempt status. Exempt persons shall not be required to pay a certification fee.

(h) Displaying Certificate. The holder of a certificate issued pursuant to this Rule shall display the certificate in the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

Authority G.S. 90-142; 90-143.4.

21 NCAC 10 .0215 PETITION FOR PREDETERMINATION

(a) General. Pursuant to G.S. 93B-8.1(b6), any person with a criminal history may petition the Board at any time for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license, in accordance with this Rule. Petition forms and instructions may be found on the Board's website at <https://ncchiroboard.com>.

(b) Petition Procedure. To petition the Board under this Rule, a person must submit to the Board's office a petition for predetermination that contains all of the following information:

- (1) The person's full name;
- (2) The last four digits of the person's social security number;
- (3) The person's current residential address;
- (4) The person's current mailing address;
- (5) A complete and accurate nationwide criminal history record report from the criminal records reporting service currently under contract with the Board;
- (6) For each crime identified in the criminal history record report, the following information:
 - (A) Whether the crime was a felony or misdemeanor;
 - (B) The date that the crime occurred;
 - (C) The date the person was convicted of, or plead guilty or nolo contendere to, the crime;
 - (D) The age of the person at the time of the crime;
 - (E) The circumstances surrounding the commission of the crime;
 - (F) The sentence imposed for the crime;
 - (G) The period of time during which the person was incarcerated for the crime;
 - (H) The period of time during which the person was on probation or parole for the crime;
 - (I) Any documentation related to the person's rehabilitation or employment since the date of the crime;
 - (J) Whether the person has undergone any rehabilitative drug or alcohol treatment since the date of the crime;
 - (K) Whether a Certificate of Relief has been granted regarding the crime, pursuant to G.S. 15A 173.2; and
 - (L) Any affidavits or other written documents, including character references, for the person.

- (7) An affirmation under oath that the person has read the Instructions for Submitting a Petition for Predetermination and the statutes and rules governing the practice of chiropractic and that the information contained in the petition is true and accurate.

Incomplete petitions will not be considered by the Board. If incomplete petitions received by the Board are not made complete within 30 days of receipt, the incomplete petitions will be returned to the person from whom the request was made.

(c) Petition Fee. A non-refundable petition fee of forty-five dollars (\$45.00) shall accompany each petition. This fee may be paid by credit card through the Board's website at <https://ncchiroboard.com> or by check made payable to the North Carolina Board of Chiropractic Examiners. Cash shall not be accepted.

(d) Delegation of Authority for Predetermination. The Board delegates authority for rendering predeterminations under this Rule to the Chiropractic Review Committee.

Authority G.S. 90-143.3; 90-154; 93B-8.1.

SECTION .0300 - RULES OF UNETHICAL CONDUCT

21 NCAC 10 .0302 ADVERTISING AND PUBLICITY

(a) General. Doctors of Chiropractic shall exercise restraint in matters of advertising and publicity so as to maintain the dignity of chiropractic as a recognized profession.

(b) Identification. The terms by which a licentiate may identify himself professionally are listed in G.S. 90-154.2(4). Terms which do not indicate that the licentiate is a chiropractor, such as "drugless physician" or "naturopath", shall not be used. Methods of professional identification may include:

- (1) Signs. Signs may be placed on exterior doors, windows or walls of the licentiate's office or at entrances to the building in which his office is located.
- (2) Stationery. A licentiate may identify himself on his stationery and mailing literature using the terms permitted by this Rule.

(c) Prohibited Advertising. The Board of Examiners deems the following to be false or misleading advertising in violation of G.S. 90-154(b)(1):

- (1) Advertising which purports to guarantee a beneficial result from chiropractic treatment.
- (2) Advertising which promotes a treatment, therapy or service which the Board of Examiners has found to be unacceptable ~~care~~ care or outside the scope of practice.
- (3) Advertising in which the licentiate is identified as a specialist, unless the licentiate has complied with the requirements of 21 NCAC 10 .0304 and any reference to the specialty is immediately preceded by the term "chiropractic." Illustrations: "pediatrics" standing alone is deemed false or misleading; "chiropractic pediatrics" conforms to this Rule. "Neurologist" standing alone is deemed false or

misleading; "chiropractic neurologist" conforms to this Rule.

- (4) Advertising which implies the licensee holds an additional license(s) in North Carolina including but not limited to a medical physician, physical therapist, massage therapist, or acupuncturist.

Authority G.S. 90-142; 90-154.

SECTION .0400 - RULE-MAKING PROCEDURES

21 NCAC 10 .0401 PETITIONS FOR ADOPTION OF RULES

(a) General. The procedure for petitioning the Board of Examiners to adopt, amend or appeal a rule is governed by G.S. 150B-16.

(b) Submission. Rule-making petitions shall be sent to the ~~secretary~~ president of the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of the proposed rule;
- (2) the reason for its proposal;
- (3) the effect of the proposed rule on existing rules or decisions;
- (4) data supporting the proposed rule;
- (5) practices likely to be affected by the proposed rule;
- (6) persons likely to be affected by the proposed rule.

(c) Disposition. The ~~secretary~~ president shall review the petition and develop a recommendation as to whether the petitioner's proposed rule should be rejected or implemented. The ~~secretary~~ president shall present the petition and his recommendation to the Board at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. The Board shall notify the petitioner of its decision in writing within the 120-day period set by G.S. 150B-16.

Authority G.S. 90-142; 150B-16.

21 NCAC 10 .0403 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B-12.

(b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice through its newsletter to licentiates on the Board's website at <https://ncchiroboard.com>, or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the ~~secretary and shall be responsible for the cost of mailing said notice.~~ Board office.

(c) Public Hearing. Any public rule-making hearing required by G.S. 150B-12 shall be conducted by the President of the Board or by any person he or she may delegate. The presiding officer shall have complete control of the hearing and shall conduct the hearing

so as to provide a reasonable opportunity for any interested person to present views, data and comments.

- (1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his or her discretion, prescribes a greater time limit.
- (2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

Authority G.S. 150B-12.

21 NCAC 10 .0406 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board of Examiners is governed by G.S. 150B-17.

(b) Request for Declaratory Ruling: Contents. A request for a declaratory ruling shall be in writing and addressed to the ~~secretary~~ president. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule;
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.

(c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) When the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question;
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

Authority G.S. 150B-17.

SECTION .0500 - INVESTIGATION OF COMPLAINTS

21 NCAC 10 .0501 FILING COMPLAINTS

~~(a) General.~~ Any person who has reason to believe that a Doctor of Chiropractic has violated the laws governing chiropractic may file a complaint with the ~~Board of Examiners.~~ Board. Directions on filing a complaint and the complaint form can be found on the Board's website at <https://ncchiroboard.com/complaint-filing-process>. Complaints ~~should~~ shall be filed directly with the ~~secretary of the Board of Examiners.~~ office.

~~(b) Form of Complaint.~~ Complaints may be formal or informal, but must be in writing:

- (1) ~~Informal Complaints.~~ Any written communication, construed most favorably to the complainant, which appears to allege a violation of the laws governing chiropractic shall be considered an informal complaint.
- (2) ~~Formal Complaint.~~ A formal complaint shall be executed in writing under oath upon a form provided by the secretary. It shall specify the

~~statute or rule allegedly violated and shall contain a short statement of the acts or omissions constituting the alleged violation including the dates of said acts or omissions.~~

~~(c) Secretary's Response to Complaints.~~ The secretary shall review any complaint to determine whether a major or minor violation has been alleged. If the secretary determines that the alleged violation is minor, he shall attempt to resolve the complaint by informal communication with the complainant and the chiropractor complained of. If the secretary determines that the alleged violation is major, he shall assist the complainant in filing a formal complaint.

Authority G.S. 90-142; 90-154.

21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE

(a) General. ~~Formal complaints~~ Complaints deemed likely to have occurred, based on the findings of the Investigative Report, shall be ~~investigated by~~ referred to the Chiropractic Review Committee. The committee shall hold a hearing to determine whether there is probable cause to believe a violation of the laws governing Chiropractic has occurred.

(b) Composition of Chiropractic Review Committee. The committee shall be composed of:

- (1) the secretary of the Board of Examiners. If the secretary is unable to attend a particular specific probable cause hearing, he or she may designate another physician member of the Board to serve and assume his or her duties at said hearing;
- ~~(2) the attorney for the Board of Examiners; and~~
- ~~(3)~~(2) an alternate Board member. "Alternate Board member" means:
 - (A) a former Board member selected by the secretary; or
 - (B) a current Board member selected by the secretary; or
 - ~~(B)~~(C) a licensee selected by the secretary from among those who, at any election held pursuant to Rule .0103(c) of this Chapter, have been elected nominees for Board membership but not appointed to the Board.

(c) Notice of hearing. The secretary shall provide notice of the probable cause hearing in accordance with G.S. 150B-38(b).

(d) Conduct of Probable Cause Hearing. The probable cause hearing shall be informal, and the ~~secretary~~ secretary, or designee per Subparagraph (b)(1) of this Rule, shall preside. The Chiropractic Review Committee may consider evidence at the probable cause hearing that would not be admissible if offered at the hearing in a contested case.

(e) Action by the Chiropractic Review Committee. After examining the evidence presented at the probable cause hearing, the Chiropractic Review Committee may dispose of each charge in the formal a complaint as follows:

- (1) If no probable cause exists to believe that a violation of G.S. 90-154 has occurred, the charge may be dismissed;

- (2) If probable cause exists to believe that a violation of G.S. 90-154 has occurred, and if the Committee and licensee at issue fail to resolve the matter through settlement, the case will be considered a "contested case" and set for hearing before either the Board, or an Administrative Law Judge at the NC Office of Administrative Hearings, at the discretion of the Board.
- ~~(2) If the respondent admits the charge, he may be directed to cease and desist from commission of those acts which violate the provisions of G.S. 90-154; or~~
- ~~(3) If a charge is denied and probable cause is found, or if a charge, while admitted, is of such gravity as to make the imposition of punitive sanctions appropriate, the complaint shall be presented to the Board of Examiners for its decision on the merits.~~

Authority G.S. 90-141; 90-143; 90-154.

SECTION .0700 - HEARINGS IN CONTESTED CASES

21 NCAC 10 .0706 CONDUCT OF BOARD HEARING

(a) General. Hearings in contested cases shall be conducted by a majority of the Board, unless a majority of the Board votes to designate an administrative law judge to preside at the hearing in the Office of Administrative Hearings instead. The president shall serve as presiding officer at Board Hearings unless he or she is absent or disqualified, in which case the vice-president shall preside. Board Hearings shall be conducted as prescribed by G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a Board Hearing on a contested case shall be as prescribed in G.S. 150B-41.

Authority G.S. 150B-40; 150B-41.

21 NCAC 10 .0708 CONTINUANCES FOR BOARD HEARINGS

(a) Consistent with G.S. 150B-40(b), all motions for continuance shall be addressed to the secretary, or the designated presiding officer of the contested case hearing.

(b) Motions for a continuance of a hearing may be granted upon a showing of compelling cause. Under no circumstances is the Board required to grant continuances.

(c) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(d) In determining whether good cause exists, the presiding officer may consider the ability of the party requesting a continuance to proceed effectively without a continuance.

(e) Usually, a motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier.

(f) Motions for continuance filed on the date of the hearing shall be granted to a party only under compelling circumstances, especially if a continuance has been previously requested.

Authority G.S. 90-156; 150B-38(h).

21 NCAC 10 .0709 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a Board Hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any document sought;
- (3) include the full name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain the following:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour, and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue;
- (7) the signature of the presiding officer or his designee; and
- (8) a "return of service." The "return of service" form as filled out, shall show:
 - (A) the name and capacity of the person serving the subpoena;
 - (B) the date on which the subpoena was delivered to the person directed to make service;
 - (C) the date on which service was made;
 - (D) the person on whom service was made;
 - (E) the manner in which service was made; and
 - (F) the signature of the person making service.

(c) Subpoenas shall be served in a manner set forth in Rule 45 of the N.C. Rules of Civil Procedure.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Written objections shall comply with Rule 45 of the N.C. Rules of Civil Procedure.

(e) The party who requested the subpoena may file a written response to the objection. The written response shall be served by

the requesting party on the objecting witness with filing the response with the Board.

(f) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(g) Promptly after the close of such Board Hearing, a majority of the Board members with voting authority will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Authority G.S. 150B-38; 150B-39; 150B-40.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16W .0104 and amend the rule cited as 21 NCAC 16W .0101.

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

Proposed Effective Date: January 1, 2020

Public Hearing:

Date: October 10, 2019

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action: 21 NCAC 16W .0101 is proposed for amendment and 21 NCAC 16W .0104 is proposed based on a request received by the NC Dental Society and the NC Oral Health Coalition to permit increased access to care in underserved areas.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

SUBCHAPTER 16W - PUBLIC HEALTH HYGIENISTS

SECTION .0100 - PUBLIC HEALTH HYGIENISTS

21 NCAC 16W .0101 DIRECTION DEFINED

(a) Pursuant to G.S. 90-233(a), a A public health hygienist may perform clinical hygiene procedures in accordance with G.S. 90-233(a). ~~"under the direction of a licensed dentist," as defined by 21 NCAC 16Y .0104(e) of this Chapter, who is employed by a State government dental public health program or a local health department as a public health dentist.~~

(b) The specific clinical procedures delegated to the hygienist shall be completed, in accordance with a written order from the dentist, within ~~420~~ 270 days of the dentist's in-person evaluation of the patient.

(c) The dentist's evaluation of the patient shall include a comprehensive oral examination, medical and dental health history, and diagnosis of the patient's condition.

(d) A public health hygienist may provide educational information, such as instruction in brushing and flossing, without the Direction direction of a licensed dentist is not required for public health hygienists who provide only educational information, such as instruction in brushing and flossing. dentist.

Authority G.S. 90-223; 90-233(a).

21 NCAC 16W .0104 DENTAL ACCESS SHORTAGE AREAS

(a) Public health hygienists who are practicing under Rule .0101(a) of this Section and who perform procedures in public schools, nursing homes, rest homes, long-term care facilities, and rural and community clinics operated by federal, State, county, or local governments in areas identified by the Office of Rural Health in the Department of Health and Human Services as dental access shortage areas may:

- (1) perform clinical hygiene procedures as described in G.S. 90-221 under the direction of a dentist based on a written standing order, rather than an in-person evaluation by the dentist as set forth in Rule .0101(c) of this Section; and
- (2) supervise a Dental Assistant who assists the public health hygienists in the procedures described in Subparagraph (a)(1) of this Rule.

(b) Public health hygienists working under supervision of a dentist in accordance with G.S. 90-233(a) and providing services at facilities identified in Paragraph (a) of this Rule who are

performing services pursuant to a written order from the dentist must complete the procedures ordered within 270 days.
(c) Dentists providing services at facilities pursuant to Paragraph (a) of this Rule are providing public health services and may supervise more than two public health hygienists at the same time who are performing dental hygiene functions.

Authority G.S. 90-223; 90-233(a); 90-233(b).

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rule cited as 25 NCAC 01E .0210.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking>

Proposed Effective Date: February 1, 2020

Public Hearing:

Date: October 1, 2019

Time: 2:00 p.m.

Location: Office of State Human Resources, Department of Administration, 116 Jones Street, Raleigh, NC 27603

Reason for Proposed Action: 25 NCAC 01E .0210 Separation: Payment of Vacation Leave is amended to align with 25 NCAC 01E .2005 regarding vacation and sick leave accumulated during the first twelve months of workers' compensation leave and bonus leave granted at any time during leave when employee is separated and excess vacation leave over 240 hours maximum if employee returns to permanent duty after workers' compensation leave. The language of the Rule has also been clarified for easier administration of rule by State agency human resources staff when employees on workers' compensation leave are separated.

Comments may be submitted to: Christine Ryan, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4838; email Christine.Ryan@nc.gov

Comment period ends: November 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0200 - VACATION LEAVE

25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) The agency shall pay an employee in a lump sum for vacation leave only at the time of ~~separation.~~ separation, except as set forth in Paragraph (h) or (i) of this Rule.

(b) When separated from ~~state~~ State service due to resignation, dismissal, or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee shall ~~ceases~~ cease to accumulate leave ~~and ceases to~~ or be entitled to take sick leave. The last day of work ~~is~~ shall be the date of separation.

(c) When separated from ~~state~~ State service due to service retirement, early retirement, or reduction in force, an employee may, at the discretion of the employee's supervisor, elect to exhaust vacation leave after the last day of work but prior to the effective date of the separation. All benefits shall accrue while leave is being ~~exhausted~~ exhausted, including holidays that occur during the period. Unused vacation leave not exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation ~~is~~ shall be determined as follows:

- (1) If leave is exhausted, the last day of leave is the date of separation.
- (2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, the employing agency shall deduct the value of the overdrawn leave from the final salary check.

(e) The employing agency shall make a retirement deduction from all leave payments.

(f) Receipt of lump sum leave payment and retirement benefit is shall not be considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, vacation leave, and travel, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, the employing agency must make a payment in accordance with the provisions of G.S. ~~28A-25-6.~~ 28A-25-6(a).

(h) In the case of an employee separated due to a workers' compensation injury pursuant to 25 NCAC 01C .1007(a)(3), leave shall be paid in a lump sum as follows:

- (1) Payment of unused vacation and bonus leave eligible for payout already earned as of the date of injury.
- (2) Payment of unused vacation and sick leave accumulated only during the first 12 months of workers' compensation leave.
- (3) Payment of any unused bonus leave eligible for payout granted on or after the date of injury.

(i) If the employee returns to permanent duty after workers' compensation leave, vacation leave remains available for use after returning to work until the end of the calendar year, at which time any excess vacation leave over the 240-hour maximum shall be

converted to sick leave. If the employee separates for any reason during the calendar year in which they returned to work after workers' compensation leave, the employee shall be paid a lump sum for unused leave as follows:

- (1) Payment of unused vacation and bonus leave eligible for payout already earned as of the date of injury.
- (2) Payment for unused vacation leave accumulated during the first 12 months of workers' compensation leave.
- (3) Payment of any unused bonus leave eligible for payout granted on or after the date of injury.

Authority G.S. ~~28A-25-6(a),(e)~~; 126-4.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 08 – STATE BOARD OF ELECTIONS

Rule-making Agency: *State Board of Elections*

Rule Citation: *08 NCAC 10B .0103; 17 .0101-.0106, and .0109*

Effective Date: *August 23, 2019*

Date Approved by the Rules Review Commission: *August 15, 2019*

Reason for Action: *G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical "to" implement the provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.3(a3).*

CHAPTER 10 - BALLOT ROTATION RULES FOR PRIMARY ELECTION BALLOTS

SUBCHAPTER 10B – VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

08 NCAC 10B .0103 VOTING PROCEDURES

(a) From the time the polls are opened on Election Day until the precinct count has been completed, the returns signed, and the results declared, and from the time the voting place opens for one-stop voting until the voting place closes at the end of the one-stop period, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by ~~law~~ G.S. 163-166.9 or 08 NCAC 10B .0108 to accommodate curbside voters. Provisions for ~~secure~~ secure removal of election supplies and materials at any time ~~would be~~ are permissible under the emergency management plan of a county board of elections in the cases of natural or man-made ~~emergencies~~ emergencies, pursuant to 08 NCAC 10B .0106.

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall ~~clearly~~ communicate the person's name and place of residence and present photo identification in accordance with G.S. 163A-1145.1(a) to one of the ~~judges of election~~ election officials. ~~In some cases, the~~ The election official precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter

affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The ~~judge or assistant~~ election official to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by ~~other the~~ necessary officials and observers. After examining the precinct registration records, the ~~judge or assistant~~ election official shall state whether the person seeking to vote is registered. The ~~precinct judge or assistant~~ election official shall not presume the identity/name, address, or party affiliation of any person seeking to ~~vote~~ vote, and shall follow the procedures set forth in 08 NCAC 17 .0101. Each precinct shall be required to have an electronic device, including device (such as a smart phone, tablet, or laptop computer, computer) which that can be used for viewing the list of approved student and employee photo identification cards under G.S. 163A-1145.2(a) and G.S. 163A-1145.3(a) and examples of those approved eards.cards; or, in the alternative, cards. Alternatively, each precinct shall have a printed list of approved student and employee photo identification cards and examples of those approved cards.

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the ~~responsible judge of election~~ election official shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. ~~Note that unaffiliate~~ Unaffiliated voter participation in party primaries is subject to authorization by the respective ~~state~~ State party executive committees. Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

(d) ~~If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based~~ Based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either person: No person shall be denied the option to vote a provisional ballot. Reasons a person may vote a provisional ballot include, but are not limited to, include that the person:

- (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; ~~or~~
- (2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; ~~or~~
- (3) was removed from the list, but the person maintains continuous eligibility to vote within the county; or
- (4) disputes the ~~voting districts (and ballots) ballot style~~ to which the person has been ~~assigned~~ assigned; or
- (5) cannot produce the identification as required in G.S. 163A-1145.1(a) of this section. G.S. 163A-1145.1(a).

No person shall be denied an option to vote a provisional ballot.

(e) If on Election Day the person is found to not be registered to vote in the precinct and the responsible ~~judge of election~~ election official learns from the person that the person resides in a different precinct, the responsible ~~judge~~ election official shall ~~provide the person with adequate information in order to direct the person~~ inform the person that the person may vote a provisional ballot at the precinct or may go to the proper voting place. ~~precinct under G.S. 163-55 and G.S. 163-57.~~

(f) It is the duty of the ~~election official~~ chief judge and judges to gather any voter information regarding changes of name and address in order to assist the county board of elections in updating voter records. If the county board of elections has identified a voter's record pursuant to law to gather additional information, the responsible ~~judge~~ election official shall require the voter to update the information.

(g) It is the duty of the ~~chief judge and judges~~ election officials to give any voter any technical information the voter desires in regard to ballot items. In response to questions asked by the voter, the ~~chief judge and judges~~ election official shall communicate to the voter only technical information necessary to enable the voter to vote the ballot. Technical information may include the number of pages the ballot contains or confirmation that the voter received the correct ballot style.

(h) ~~The~~ On Election Day the Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook or other voting record and to keep the registration list. The names of all persons voting shall be checked on the registration record and entered on the pollbook or other voting record. In an election where observers may be ~~appointed~~ appointed, each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter. The information about the voter's political party registration shall be obtained from the registration record and not from the voter.

(i) ~~The chief judge, judges, and assistants~~ Election officials must ensure that registration records are kept secure and do not leave the voting enclosure for any purpose. ~~Properly designated observers~~ Observers appointed pursuant to G.S. 163-45 are entitled to obtain a list of the persons who have voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties using authorization to vote

documents as opposed to traditional pollbooks may comply with the requirement by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct. A party may designate more than two observers for each precinct, but only two may serve in the voting place at the same time. Observers may serve in shifts, as long as the shifts are at least four hours ~~long and the persons serving in the shifts have been properly appointed as observers.~~ long.

History Note: Authority G.S. 163-22; 163-166.7; 163-119; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004; Temporary Amendment Eff. August 23, 2019.

CHAPTER 17 - PHOTO IDENTIFICATION

08 NCAC 17 .0101 DETERMINATION OF REASONABLE RESEMBLANCE VERIFICATION OF PHOTO IDENTIFICATION AT CHECK-IN

(a) An election official shall check the registration status of all persons presenting to vote in-person on election day or during one-stop early voting pursuant to G.S. 163-166.7, and shall require that all persons presenting to vote provide one of the forms of photo identification listed in G.S. ~~163-166.13(e),~~ 163A-1145.1(a), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the person presenting to vote of applicable options specified in G.S. ~~163-166.13(e),~~ 163A-1145.1(c). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

(b) The election official shall not require photo identification of a person ~~who~~ who:

- (1) has a sincerely held religious objection to being photographed and meets the requirements of ~~G.S. 163-166.13(a)(2),~~ 163A-1145.1(d)(1), G.S. 163A-1145.1(d)(1);
- (2) ~~who~~ who suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification and meets the requirements of G.S. 163A-1145.1(d)(2), G.S. 163A-1145.1(d)(2); or
- (3) ~~or who~~ or who is the victim of a natural disaster and meets the requirements of ~~G.S. 163-166.13(a)(3),~~ 163A-1145.1(d)(3).

Persons falling within any exception listed in this Paragraph ~~who~~ who complete the ~~required~~ required affidavit required by G.S. 163A-1145.1(d) shall be allowed to proceed pursuant to ~~G.S. 163-166.7,~~ G.S. 163-166.7 and shall cast a provisional ballot. The county board of elections shall find that a provisional ballot cast by a person who meets the qualifications of this Paragraph is valid unless the county board has grounds to believe the affidavit is false. unanimously decides that the affidavit is false, pursuant to 08 NCAC 17 .0109(f).

(c) The election official shall inspect any photo identification provided by the person presenting to vote and shall determine the following:

- (1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. ~~163-166.13(e)~~; 163A-1145.1(a). A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. ~~163-166.13(e)(3)~~; 163A-1145.1(a)(1)c;
- (2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. ~~163-166.13(e)~~; 163A-1145.1(a);
- (3) That the photograph appearing on the photo identification ~~depicts~~ bears any reasonable resemblance to the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification ~~fails to depict~~ does not bear any reasonable resemblance to the person presenting to vote:
 - (A) weight;
 - (B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;
 - (C) facial hair;
 - (D) complexion or skin tone;
 - (E) cosmetics or tattooing;
 - (F) apparel, including the presence or absence of eyeglasses or contact lenses;
 - (G) characteristics arising from a perceptible medical condition, disability, gender transition, or aging;
 - (H) photographic lighting conditions or printing quality; and
- (4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation or one or more of the following reasons:
 - (A) Omission of one or more parts of the name (such as, for illustrative

purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);

- (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
- (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- (D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), names changed during the gender transition process (such as, for illustrative purposes only, Catherine Smith versus Dan Smith), or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. Jacobson);
- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia);
- (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

(d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not require that any person remove apparel for the purposes of rendering a determination under Paragraph (c). If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove the covering but shall not require that removal. If the person declines to remove the covering, the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A, or, if applicable, ~~may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3), and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the person bears any reasonable resemblance to the photo identification.~~ G.S. 163A-1145.1.

(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any other provision of Paragraph ~~(C)~~(c).

(f) The election official shall construe all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. After an examination performed in the manner set out in Paragraphs (a) through (d) of this Rule, the election official shall proceed as follows:

- (1) If the election official determines that the photo identification meets all the requirements of Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and ~~163-166.13(b)~~; 163A-1145.1; or
- (2) If the election official determines that the photo identification does not meet all of the requirements of Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote of the reasons for such determination (such as, for illustrative purposes only, that the photo identification is expired) and shall invite the person to provide any other acceptable photo identification that he or she may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election official shall inform the person presenting to vote of applicable options specified in G.S. ~~163-166.13(e)~~; 163A-1145.1(c) and (d). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.
- (3) If the election official determines that the photo identification does not meet all the requirements of Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of election that the person presenting to vote does not bear any reasonable resemblance to the photo identification.

History Note: Authority G.S. 163-82.6A; 163-82.15; 163-166.7; ~~163-166.13~~; ~~163-166.14~~; ~~163-182.1A~~; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019.

08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION

- (a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. ~~163-166.14~~ 163A-1145.1(b) only if the person presenting to vote is referred to them by an election official as set out in 08 NCAC 17 .0101(f)(3).
- (b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in 08 NCAC 17

.0101(c)(3) and (4). The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election shall consider the following, if presented:

- (1) Any information contained in the photo identification meeting the requirements of 08 NCAC 17 .0101(c)(1) and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);
- (2) Any explanation proffered by the person presenting to vote or by other persons; and
- (3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow 08 NCAC 17 .0101(e) with regard to addresses appearing on the photo identification.

(d) After considering the evidence, the judges of election shall vote to determine whether the photo identification bears any reasonable resemblance to the person presenting to vote. All judges of election must vote either yea or nay, and the result shall be governed by the following:

- (1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (e)(2), the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and ~~163-166.13(b)~~; 163A-1145.1.
- (2) If the judges of election unanimously find that the photo identification does not meet all the requirements of 08 NCAC 17 .0101(c)(3) and (4), the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner set out in Paragraph (e) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. ~~163-88.1~~; 163A-1145.1(c).

(e) The judges of election shall record their determination as to reasonable resemblance on a form provided by the State Board of Elections that provides the date and time, the voting site, the names of the judges of election, the name of the person presenting to vote, ~~and the determination of each individual judge of election.~~ and if the judges of election unanimously determine that the photo identification does not bear any reasonable resemblance to the person presenting to vote, a brief explanation as to why that determination was made.

History Note: Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; ~~163-166.13~~; ~~163-166.14~~; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); Eff. January 1, 2016; Temporary Amendment Eff. August 23, 2019.

08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS

History Note: Authority G.S. 163-166.9; 163-166.13; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1(d);
 Eff. January 1, 2016;
Temporary Repeal Eff. August 23, 2019.

08 NCAC 17 .0104 OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE RESEMBLANCE IS DETERMINED

A person able to vote a regular ballot but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and 163-82.16(d) to reflect the person's ~~true and~~ current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and ~~163-166.13(b);~~ 163A-1145.1, so long as the person remains eligible to vote based on residence within the county of the voting place.

History Note: Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; 163-166.13(b); NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);
 Eff. January 1, 2016;
Temporary Amendment Eff. August 23, 2019.

08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

History Note: Authority G.S. 163-82.7A; 163-166.12(a)(2); 163-166.13(a)(2); 163-182.1A(b)(2); 163-275; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e), (h);
 Eff. January 1, 2016;
Temporary Repeal Eff. August 23, 2019.

08 NCAC 17 .0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST AN ABSENTEE BALLOT

History Note: Authority G.S. 163-166.12(b),(b2); 163-227.2(b1),(j); 163-230.1; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(j);
 Eff. March 1, 2016;
Temporary Repeal Eff. August 23, 2019.

08 NCAC 17 .0109 PHOTO IDENTIFICATION FOR ABSENTEE BALLOTS

- (a) Definitions. The following definitions apply to this Rule:
- (1) "Readable" means that the name on the identification can be read and that the photograph is not blurry and depicts a person who is distinct and distinguishable from another person.
 - (2) "Copy" means a duplicate of an original document, including a photostatic or other

photographic copy of the original document. It does not include displaying an image on an electronic device.

(b) Identification Requirement for Absentee Ballot Request Form. A completed written request form for an absentee ballot shall include a readable electronic or physical copy of the identification required by G.S. 163A-1145.1(a) displaying a name that is the same or substantially equivalent to the name contained in the registration record as provided in 08 NCAC 17 .0101(c)(4). The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The election official shall not require any additional evidence outside the four corners of the photo identification. If the name on the identification is substantially similar to the name listed on the registration record and the identification is readable, the county board of elections shall presume that the person depicted in the photograph on the identification provided is the voter. It is not required that the address on the identification match the residential address provided on request form or the address on the registration record.

(c) Exceptions. The exceptions provided in G.S. 163A-1145.1(d) for voters voting in person shall apply to absentee by mail voters. The reasonable impediment exception under G.S. 163A-1145.1(d)(2) shall include lack of access to a method to attach an electronic or physical copy of the identification card to the request. The following additional exceptions shall apply to absentee by mail voters:

- (1) Religious Objection Exception. After the voter's ballot is counted, if a voter claims the religious objection exception under G.S. 163A-1145.1(d)(1) and completes the prescribed affidavit, the religious objection exception shall be noted on the voter's registration record. In future elections that voter shall not be required to show photo identification under G.S. 163A-1145.1 or this Rule, or claim an exception under G.S. 163A-1145.1(d), until the voter either:
 - (A)(+) notifies the county board of elections in writing that the voter no longer holds a religious objection to being photographed, photographed;
 - (B)(ii) provides photo identification in a future election, election; or
 - (C)(iii) claims an exception under G.S. 163A-1145.1(d)(2) or (d)(3) in a future election.
- (2) Annual Requests by Persons with Sickness or Physical Disability. If an applicant for an absentee request form reports in the application that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year pursuant to G.S. 163A-1298(b) G.S. 163A-1295(b) and satisfies the photo identification requirement under Paragraph (b) of this Rule or the voter completes an alternative affidavit pursuant to

G.S. 163A-1145.1(d), the photo identification requirement shall be met for all of the primaries and elections held during the calendar year when the application is received.

(3) Applications for Absentee Ballots for Voting in Second Primary or Runoff Election. A voter who is automatically issued an application and absentee ballot for a second primary pursuant to G.S. 163A-1299 or a runoff election shall not be required to submit a copy of acceptable photo identification under Paragraph (b) of this Rule or claim an exception under G.S. 163A-1145(d) with the absentee ballot and container-return envelope for the second primary or runoff election.

(4) Covered Voters Under the Uniform Military and Overseas Voter Act. A covered voter who is casting a ballot pursuant to Part 2 of Article 21 of Chapter 163A of the General Statutes shall not be required to submit a copy of acceptable photo identification under Paragraph (b) of this Rule or claim an exception under G.S. 163A-1145(d).

(d) Delivery of Absentee Ballots and Certification Form. If a voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163A-1308(b), even if the voter does not provide the identification required by G.S. 163A-1309(a)(4) and this Rule with the request. However, the voter shall provide identification or claim an exception under G.S. 163A-1145.1(d) prior to the counting of the voter's absentee ballot. If the voter provides the identification required by this Rule or claims an exception under G.S. 163A-1145.1(d) with the absentee ballot request form, the voter is not required to attach additional documentation to the container-return envelope.

(e) Valid Absentee Ballot Request Forms Requiring Further Action.

(1) The county board of elections shall include with the absentee ballots and certification form a letter notifying the voter that the voter's request is valid under G.S. 163A-1309(a) but that further action is needed by the voter to comply with the identification requirements, if any of the following apply:

(A) The voter does not submit the identification required by G.S. 163A-1309(a)(4).

(B) The voter does not claim an exception under G.S. 163A-1145.1(d).

(C) The voter includes an unreadable copy of the identification required by G.S. 163A-1309(a)(4).

(D) The identification does not meet the expiration date requirements under G.S. 163A-1145.1(a).

(E) The voter provides a type of identification not listed under G.S. 163A-1145.1(a).

(F) The voter provides identification displaying a name that is not the same as or substantially similar to the name on the voter record as required pursuant to Paragraph (b) of this Rule.

(G) The exception affidavit is incomplete, either because there is no signature or, in the case of a reasonable impediment exception under G.S. 163A-1145.1(d)(2), the voter did not complete the reasonable impediment declaration form under G.S. 163A-1145.1(d1).

(H) The voter indicates she or he will provide identification at a later time.

(2) The letter required in Subparagraph (1) of this Paragraph shall provide the voter with the following options:

(A) At any point between the submission of the absentee ballot request form and the transmission of the executed absentee ballot to the county board of elections, 5:00 P.M. on the day before the county canvass, provide the documentation necessary to comply with the identification requirements via email, mail, or in person.

(B) Attach to the absentee ballot container-return envelope the documentation necessary to comply with the identification requirements pursuant to G.S. 163A-1307(b)(8).

(f) Counting of Absentee Ballots. Prior to the transmission of absentee ballots pursuant to G.S. 163A-1308(c), the county board of elections shall notate the voter's ID status on the container-return envelope for a voter who requires further action pursuant to Subparagraph (1) of Paragraph (e). Subparagraph (e)(1) of this Rule. The county board of elections shall, at the first meeting held pursuant to G.S. 163A-1308(f) to pass upon applications for absentee ballots after the absentee ballot is received, consider whether the voter has complied with the photo identification requirements in G.S. 163A-1145.1(a) and this Rule or whether an exception applies under G.S. 163A-1145.1(d). In its determination, the county board shall construe all evidence in the light most favorable to the voter. If an exception applies, the county board of elections shall review the affidavit provided. Absent any other reason provided by law for disapproving absentee ballots, if the county board of elections determines that the registered voter is unable to provide proof of identification and the voter has completed the required affidavit in G.S. 163A-1145.1(d), the county board of elections shall find that the absentee ballot is valid unless the county board has grounds to believe the affidavit is false. A decision that the absentee ballot is not approved because the affidavit provided under G.S. 163A-1145.1(d) is false shall require a unanimous vote by the county board of elections. If the voter fails to submit acceptable photo identification pursuant to G.S. 163A-1145.1(a) and this Rule or fails to submit a completed alternative affidavit pursuant to G.S. 163A-1145.1(d) with the container-return envelope, the mailed

ballot shall be treated in the same manner as mail-in absentee ballot under G.S. 163A-1144(e).

(g) Photocopy Requirement. The county board of elections shall allow any person seeking to vote by absentee ballot the use a photocopying device to make one photocopy of the voter's form of photo identification.

(h) Return of original form of identification. If a voter sends his or her original form of photo identification with either the absentee request form or in the container-return envelope, the county board of elections shall make a photocopy of the identification and mail the identification back to the voter.

~~(i) Reasonable Impediment Informational Letter. If on the absentee request form a voter completes a valid reasonable impediment affidavit in accordance with G.S. 163A-1145.1(d)(2), the county board of elections shall send that voter a letter, for information purposes only, explaining the way to obtain a free voter photo identification card pursuant to G.S. 163A-869.1, notifying the voter of his or her ability to make one free photocopy of the photo identification at the county board of elections office pursuant to this Rule, and giving the voter the opportunity to provide acceptable photo identification by exercising the options provided in Subparagraph (e)(2).]~~

(i)(j) Retention of Copies of Photo Identification and Exception Affidavits. Copies of photo identification and alternative affidavits shall be retained according to the same schedule for absentee ballot applications under G.S. 163A-1313, except that copies of religious objection affidavits shall be retained in the statewide Statewide computerized voter registration system maintained under G.S. 163A-874 until the voter either

- ~~(i) notifies the county board of elections in writing that the voter no longer holds a religious objection to being photographed,~~
- ~~(ii) provides photo identification in a future election, or~~
- ~~(iii) elaims an exception under G.S. 163A-1145.1(d)(2) or (d)(3) in a future election. ends this exemption pursuant to the methods listed in Parts (c)(1)(A) through (C).~~

History Note: Authority G.S. 163A-1145.1; 163A-1307; 163A-1309(f); 163A-1319; S.L. 2018-144, s. 1.2.(e), (i); Temporary Adoption Eff. August 23, 2019.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 15, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

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

Appointed by House

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

COMMISSION COUNSEL

Amber Cronk May (919) 431-3074
Amanda Reeder (919) 431-3079
Ashley Snyder (919) 431-3081

RULES REVIEW COMMISSION MEETING DATES

September 19, 2019 October 17, 2019
November 21, 2019 December 19, 2019

**RULES REVIEW COMMISSION MEETING
MINUTES**

August 15, 2019

The Rules Review Commission met on Thursday, August 15, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Paul Powell.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the July 18, 2019 meeting. There were none and the minutes were approved as distributed.

The Chairman notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Temporary Rules for the State Board of Elections and Permanent Rules for the Board of Electrolysis Examiners.

FOLLOW UP MATTERS

Board of Elections

08 NCAC 10B .0101, .0102, .0104, .0105, .0106, and .0107 were unanimously approved.

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Social Services Commission

10A NCAC 06R .0101, .0102, .0201, .0302, .0304, .0305, .0401, .0403, .0501, .0502, .0503, .0504, .0506, .0508, .0509, .0601, .0801, .0802, .0804, .0806, .0902, and .0904 were unanimously approved.

10A NCAC 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; and 06T .0201 - The Commission objected due to lack of statutory authority.

DHHS/ Division of Health Benefits

10A NCAC 23G .0304 - The agency is addressing the objections from the July meeting. No action was required by the Commission.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Social Services Commission

10A NCAC 67A .0103, .0105, .0106, .0107, .0108, .0203, .0204, .0205, .0206; 68 .0101, .0102, .0107, .0108, .0303; 69 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0301, .0302, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0601, .0603; 72 .0102, .0201, .0202, .0203, and .0301 were unanimously approved.

The Commission objected to 10A NCAC 67A .0101, .0201, .0202; 68 .0103, .0104, .0105, .0106, .0202, .0203, .0204, .0205, .0206, .0208, .0301, and .0303; 69 .0602, .0604, .0605; and 72 .0101 in accordance with G.S. 150B-21.10.

The Commission objected to 10A NCAC 67A .0101 and .0201 as being unnecessary as these Rules only provide cross-references to other rules or provide information otherwise set forth in Statute.

The Commission objected to 10A NCAC 67A .0202 as being unnecessary as 45 CFR 205.10(a)(4) provides notice requirements for cases of "intended action to discontinue, terminate, suspend, or reduce assistance..."

The Commission objected to 10A NCAC 68 .0103 as being unnecessary given G.S. 150B-21.1(a3) and 21.2(e), which provide requirements regarding rulemaking hearings. This Rule also appears to pertain exclusively to internal management, which does not meet the definition of a rule pursuant to G.S. 150B-2(8a)(a).

The Commission objected to 10A NCAC 68 .0104 as being unnecessary given G.S. 150B-21.2(e) and (f), which provides requirements regarding rulemaking hearings and public comments. Further, the Commission found this Rule to be unclear with the use of "promptly", "brief", "clearly", "full and effective", and "fair" without providing additional clarifying information. Finally, the Commission found this Rule to be beyond the statutory authority of the agency as it conflicts with G.S. 150B-21.2(f).

The Commission objected to 10A NCAC 68 .0105 as being unnecessary as G.S. 150B-21.2(c) sets forth notice requirements regarding the grant or denial of a rule-making petition.

The Commission objected to 10A NCAC 68 .0106 as being unnecessary as G.S. 150B-21.2(i) requires that an agency maintain a rulemaking record and provides the information to be included in that record.

The Commission objected to 10A NCAC 68 .0202, .0203, .0204, .0205, .0206, and .0208 as being unnecessary as these Rules are repetitive of Section .0100 of Chapter 68.

The Commission objected to 10A NCAC 68 .0301 for lack of statutory authority as none of the cited authority provides rulemaking authority regarding employment of county departments of social services to the Social Services Commission.

The Commission objected to 10A NCAC 68 .0303 as being unnecessary as this Rule appears to be addressed by G.S. 108A-14(b). Further, the Commission objected to this Rule for lack of statutory authority as none of the cited authority provides rulemaking authority regarding delegation between a county board and the director of a county department to the Social Services Commission.

The Commission objected to 10A NCAC 69 .0602, .0604, and .0605 as being unnecessary as these Rules reference contract terms.

The Commission objected to 10A NCAC 72 .0101 as being unnecessary as this Rule does not provide any directives to the regulated public nor provide any information not otherwise available in rule or statute.

Department of Justice

12 NCAC 02I .0213 was withdrawn at the request of the agency.

At the June meeting, the RRC voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget to determine if the adoption of 12 NCAC 02I .0306 has a substantial economic impact and therefore requires a fiscal note. The RRC is awaiting a response from the Office of State Budget. No action was required by the Commission.

Environmental Management Commission 15A NCAC 02B, 02H

The agency is addressing the objections for 15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206. No action was required by the Commission.

Environmental Management Commission 15A NCAC 02C

15A NCAC 02C .0101, .0102, .0105, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0116, .0117, .0118, .0119, .0201, .0202, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0217, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0229, .0230, .0240, .0241, and .0242 – All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02T

15A NCAC 02T .1601, .1602, .1604, .1605, .1606, .1607, and .1608 - All rules were unanimously approved.

Coastal Resources Commission

15A NCAC 07J .0409 was unanimously approved.

Board of Dietetics/Nutrition

The agency is addressing the objections for 21 NCAC 17 .0101 and .0303. No action was required by the Commission.

State Human Resources Commission

25 NCAC 01E .0210 was withdrawn at the request of the agency.

25 NCAC 01I .1702, .1805, .1902, .1903, .1905, .2003, .2105, .2302, .2303, .2304, .2305, .2306, .2307, and .2310 were unanimously approved.

LOG OF FILINGS (PERMANENT RULES)

Department of Insurance

All rules were unanimously approved.

Alcoholic Beverage Control Commission

All rules were unanimously approved with the following exceptions:

14B NCAC 15A .0201, .0202, .0203, .0204, .0601, and .0602 were withdrawn at the request of the agency.

Alarm Systems Licensing Board

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02B

15A NCAC 02B .0621 and .0624 were unanimously approved.

The Commission extended the period of review for 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0203, .0204, .0205, .0206, .0208, .0211, .0212, .0214, .0215, .0216, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0230, .0231, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0314, .0315, .0316, and .0317 in accordance with G.S. 150B-21.10. It did so in response to a request from the agency to extend the period in order to allow the agency additional time to address technical change requests.

Environmental Management Commission 15A NCAC 02D

All rules were unanimously approved.

Board of Architecture

21 NCAC 02 .0211 was unanimously approved.

Prior to the review of the rule from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm represents the Board.

Commissioner Choi left the meeting during the discussion concerning the rule.

Licensing Board for General Contractors

All rules were unanimously approved.

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and she is the rulemaking coordinator for the Board.

Board of Electrolysis Examiners

All rules were unanimously approved.

21 NCAC 19 .0501 was approved contingent upon a technical change to Paragraph (a) to state that the supervising physician shall be readily available during services in accordance with G.S. 88A-11.1(c). The technical change was subsequently received.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 21 NCAC 19 .0501.

Dorenda Stilwell, with Hairaway Electrolysis & Laser, Inc., addressed the Commission.

Trudy Brown, with Advance Laser and Skin Rejuvenation, addressed the Commission.

Ashley McCullough, a member of the Board, addressed the Commission.

Susan Magas, Administrative Assistant with the Board, addressed the Commission.

LOG OF FILINGS (TEMPORARY RULES)

State Board of Elections

08 NCAC 10B .0103; 17 .0101, .0102, .0103, .0104, .0105, .0106, and .0109 were unanimously approved.

EXISTING RULES REVIEW

Commission for Mental Health/DD/SAS

10A NCAC 27G - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The Chair gave a brief update on the enactment of SL 2019-140 - Amend Administrative Procedure Laws.

The Chair announced that the Style Guide will be added to the September agenda for a vote on adoption by the RRC. Additionally, the RRC will be holding its Elections of Officers at the September meeting.

The meeting adjourned at 10:29 a.m.

The next regularly scheduled meeting of the Commission is Thursday, September 19, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

August 15, 2019

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Dennis Seavers	BBE
Paris Penny	NC DHHS
Misty PM	DHHS
Dorend Stihmel	NC BEE
Alicia Saintois	"
Tracy Jonas	"
Susan Magas	"
Ashley McCallough	NCBEE
Rudy Brown	"
Katelyn Love	SBE
Dana Besh	NC NC Electrolyn
Frank Wiesner	NCLBGC
Debbie Price	NCLBGC
Loretta Peace Bunch	NC DOT
Michael Rogen	NC DWR
RAJ PREMAKUMAR	NC DOJ
Deirda Carter	DHHS - PAA
Jennifer Morris	
Ry Fisher	NCBEE
Kelly Tomow	NC SBE
Patrick Knowlson	NC DAQ

RULES REVIEW COMMISSION

August 15, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Matthew F. Davis	NC DEQ
PAUL CLARK	NC DEQ
Thomas Campbell	NC DOJ
WALKER REAGAN	NC ABC Comm
Danise Marza	NC OSHR
CHRISTINE RYAN	NC OSHR
HEATHER CARTER	NC DHHS - DAAS
Pebray, Witz	NC ^{DEQ} DEUR - DWR
W. Denise Baker	NC DHHS - OMI/PO/SAS
Charminique Williams	DOJ
Jeff M. Gray	ASLVS
Cara Bridges	NC GA
Grant Schwab	↓
Susie Camilleri	



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 15, 2019

Denise Baker
Division of Mental Health
3001 Mail Service Center
Raleigh, North Carolina 27699-3001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 27G

Dear Ms. Baker:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 15, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2022.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
---	---	---	---	---	---

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW**

May 16, 2019

APO Review: July 20, 2019

**Mental Health/DD/SAS, Commission for
Total: 2**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 27G .0207</u>	Necessary with substantive public interest
<u>10A NCAC 27G .2202</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES
August 15, 2019 Meeting**

ELECTIONS AND ETHICS ENFORCEMENT, BOARD OF

<u>Tasks and Duties of Precinct Officials at Voting Places</u>	08 NCAC	10B	.0101
<u>Setting up Polling Place Prior to Voting</u>	08 NCAC	10B	.0102
<u>Leaving the Voting Enclosure, Spoiled or Incomplete Ballots</u>	08 NCAC	10B	.0104
<u>Procedures at the Close of Voting</u>	08 NCAC	10B	.0105
<u>Election Supplies Return</u>	08 NCAC	10B	.0106
<u>Assistance to Voters in Primaries and General Elections</u>	08 NCAC	10B	.0107

SOCIAL SERVICES COMMISSION

<u>Certification Requirement</u>	10A NCAC	06R	.0101
<u>Corrective Action</u>	10A NCAC	06R	.0102
<u>Definitions</u>	10A NCAC	06R	.0201
<u>Program Goals</u>	10A NCAC	06R	.0302
<u>Insurance</u>	10A NCAC	06R	.0304
<u>Personnel: Centers: Home with Operator and Staff</u>	10A NCAC	06R	.0305
<u>General Requirements</u>	10A NCAC	06R	.0401
<u>Equipment and Furnishings</u>	10A NCAC	06R	.0403
<u>Planning Program Activities</u>	10A NCAC	06R	.0501
<u>Nutrition</u>	10A NCAC	06R	.0502
<u>Transportation</u>	10A NCAC	06R	.0503
<u>Emergencies and First Aid</u>	10A NCAC	06R	.0504
<u>Hours and Days of Operation</u>	10A NCAC	06R	.0506
<u>Records</u>	10A NCAC	06R	.0508
<u>Program Evaluation</u>	10A NCAC	06R	.0509
<u>Procedure</u>	10A NCAC	06R	.0601
<u>The Certificate</u>	10A NCAC	06R	.0801
<u>Provisional Certificate</u>	10A NCAC	06R	.0802
<u>Denial or Revocation of Certificate</u>	10A NCAC	06R	.0804
<u>Procedure for Appeal</u>	10A NCAC	06R	.0806
<u>Policies and Procedures</u>	10A NCAC	06R	.0902
<u>Enrollment - Special Care Services</u>	10A NCAC	06R	.0904
<u>Standards for Office Space and Facilities</u>	10A NCAC	67A	.0103
<u>Administration and Agency Compliance</u>	10A NCAC	67A	.0105
<u>Civil Rights</u>	10A NCAC	67A	.0106
<u>Forms</u>	10A NCAC	67A	.0107
<u>Advisory to Counties Regarding Petition of Garnishment</u>	10A NCAC	67A	.0108
<u>Good Cause for Delayed Hearings</u>	10A NCAC	67A	.0203
<u>Attendance at the Hearing</u>	10A NCAC	67A	.0204
<u>Appeal of Decision</u>	10A NCAC	67A	.0205
<u>Good Cause for Not Requesting Hearing and Required Time F...</u>	10A NCAC	67A	.0206
<u>Petitions</u>	10A NCAC	68	.0101
<u>Notice</u>	10A NCAC	68	.0102
<u>Fees</u>	10A NCAC	68	.0107
<u>Declaratory Rulings</u>	10A NCAC	68	.0108

RULES REVIEW COMMISSION

<u>Selection of County Board Members by Social Services Comm</u>	10A NCAC 68	.0302
<u>Definitions</u>	10A NCAC 69	.0101
<u>Information from Other Agencies</u>	10A NCAC 69	.0102
<u>Conflict of Laws</u>	10A NCAC 69	.0201
<u>Ownership of Records</u>	10A NCAC 69	.0202
<u>Security of Records</u>	10A NCAC 69	.0203
<u>Assurance of Confidentiality</u>	10A NCAC 69	.0204
<u>Liability of Persons with Access to Client Information</u>	10A NCAC 69	.0205
<u>Right of Access</u>	10A NCAC 69	.0301
<u>Prompt Response to Request</u>	10A NCAC 69	.0302
<u>Withholding Information from the Client</u>	10A NCAC 69	.0303
<u>Procedures for Review of Records</u>	10A NCAC 69	.0304
<u>Contested Information</u>	10A NCAC 69	.0305
<u>Review of Record by Personal Representatives</u>	10A NCAC 69	.0306
<u>Procedures for Obtaining Consent for Release of Information</u>	10A NCAC 69	.0401
<u>Consent for Release of Information</u>	10A NCAC 69	.0402
<u>Persons Who May Consent to the Release of Information</u>	10A NCAC 69	.0403
<u>Informed Consent</u>	10A NCAC 69	.0404
<u>Persons Designated to Release Client Information</u>	10A NCAC 69	.0405
<u>Documentation of Release</u>	10A NCAC 69	.0406
<u>Disclosure within the Agency</u>	10A NCAC 69	.0501
<u>Disclosure for the Purpose of Research</u>	10A NCAC 69	.0502
<u>Disclosure for Purposes of Accountability</u>	10A NCAC 69	.0503
<u>Disclosure Pursuant to Other Laws</u>	10A NCAC 69	.0504
<u>Disclosure Pursuant to a Court Order</u>	10A NCAC 69	.0505
<u>Notice to Client</u>	10A NCAC 69	.0506
<u>Documentation of Disclosure</u>	10A NCAC 69	.0507
<u>Persons Designated to Disclose Information</u>	10A NCAC 69	.0508
<u>Information Needs of Service Providers</u>	10A NCAC 69	.0601
<u>Assurance of Confidentiality</u>	10A NCAC 69	.0603
<u>Definitions</u>	10A NCAC 72	.0102
<u>General Rule</u>	10A NCAC 72	.0201
<u>Satisfactory Progress Requirement</u>	10A NCAC 72	.0202
<u>Limitations of Award</u>	10A NCAC 72	.0203
<u>Scholarship Application Procedures</u>	10A NCAC 72	.0301

INSURANCE, DEPARTMENT OF

<u>Definitions</u>	11 NCAC 08	.1601
<u>Request for an Alternative Inspection</u>	11 NCAC 08	.1602
<u>Qualified Marketplace Inspections</u>	11 NCAC 08	.1603

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Purpose</u>	14B NCAC 15A	.0101
<u>Location, Addresses and Business Hours</u>	14B NCAC 15A	.0102
<u>Definitions</u>	14B NCAC 15A	.0103
<u>Distribution, Inspection and Copies of ABC Laws</u>	14B NCAC 15A	.0301
<u>Fee for Computer Service</u>	14B NCAC 15A	.0302
<u>Petition for Adoption of Rules</u>	14B NCAC 15A	.0401

RULES REVIEW COMMISSION

<u>Administrative Action</u>	14B NCAC	15A	.0402
<u>Notice of Rule-making Hearings; Mailing List</u>	14B NCAC	15A	.0403
<u>Rule-making Hearing</u>	14B NCAC	15A	.0404
<u>Revocation or Suspension of Permit</u>	14B NCAC	15A	.0501
<u>Withdrawal of Request for Declaratory Ruling</u>	14B NCAC	15A	.0605
<u>Disciplinary Action of Employee</u>	14B NCAC	15A	.0701
<u>Notice of Alleged Violation</u>	14B NCAC	15A	.0801
<u>Article 12 Hearings; Final Administrative Decision; Order</u>	14B NCAC	15A	.0805
<u>Definitions</u>	14B NCAC	15C	.0101

ALARM SYSTEMS LICENSING BOARD

<u>Application for License</u>	14B NCAC	17	.0201
<u>Fees for Licenses</u>	14B NCAC	17	.0203
<u>Fees for Licenses</u>	14B NCAC	17	.0203
<u>Renewal of License</u>	14B NCAC	17	.0204
<u>Company Business License</u>	14B NCAC	17	.0209
<u>Application for Registration</u>	14B NCAC	17	.0301
<u>Fees for Registration</u>	14B NCAC	17	.0302
<u>Renewal or ReRegistration of Registration</u>	14B NCAC	17	.0306
<u>Required Continuing Education Hours</u>	14B NCAC	17	.0502
<u>Recording and Reporting Continuing Education Credits</u>	14B NCAC	17	.0505

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Water Supply Watershed Protection Program: Definitions</u>	15A NCAC	02B	.0621
<u>Water Supply Watershed Protection Program: NonPoint Sourc...</u>	15A NCAC	02B	.0624
<u>General Provisions</u>	15A NCAC	02C	.0101
<u>Definitions</u>	15A NCAC	02C	.0102
<u>Permits</u>	15A NCAC	02C	.0105
<u>Standards of Construction: Water Supply Wells</u>	15A NCAC	02C	.0107
<u>Standards of Construction: Wells other than Water Supply</u>	15A NCAC	02C	.0108
<u>Pumps and Pumping Equipment</u>	15A NCAC	02C	.0109
<u>Well Tests for Yield</u>	15A NCAC	02C	.0110
<u>Disinfection of Water Supply Wells</u>	15A NCAC	02C	.0111
<u>Well Maintenance: Repair: Groundwater Resources</u>	15A NCAC	02C	.0112
<u>Abandonment of Wells</u>	15A NCAC	02C	.0113
<u>Data and Records Required</u>	15A NCAC	02C	.0114
<u>Designated Areas: Wells Cased to Less than 20 Feet</u>	15A NCAC	02C	.0116
<u>Designated Areas: Water Supply Wells Cased to Minimum Dep...</u>	15A NCAC	02C	.0117
<u>Variance</u>	15A NCAC	02C	.0118
<u>Delegation</u>	15A NCAC	02C	.0119
<u>Purpose</u>	15A NCAC	02C	.0201
<u>Scope</u>	15A NCAC	02C	.0202
<u>Conflict with other Laws, Rules, and Regulations</u>	15A NCAC	02C	.0203
<u>Definitions</u>	15A NCAC	02C	.0204
<u>Corrective Action</u>	15A NCAC	02C	.0206
<u>Mechanical Integrity</u>	15A NCAC	02C	.0207
<u>Financial Responsibility</u>	15A NCAC	02C	.0208
<u>Classification of Injection Wells</u>	15A NCAC	02C	.0209

RULES REVIEW COMMISSION

<u>Requirements: Wells Used to Inject Waste or Contaminants</u>	15A NCAC 02C .0210
<u>General Permitting Requirements Applicable to all Injecti...</u>	15A NCAC 02C .0211
<u>Permitting by Rule</u>	15A NCAC 02C .0217
<u>Aquifer Recharge Wells</u>	15A NCAC 02C .0218
<u>Aquifer Storage and Recovery Wells</u>	15A NCAC 02C .0219
<u>Aquifer Test Wells</u>	15A NCAC 02C .0220
<u>Experimental Technology Wells</u>	15A NCAC 02C .0221
<u>Geothermal Aqueous Closed-Loop Wells</u>	15A NCAC 02C .0222
<u>Geothermal Direct Expansion Closed-Loop Wells</u>	15A NCAC 02C .0223
<u>Geothermal Heating/Cooling Water Return Wells</u>	15A NCAC 02C .0224
<u>Groundwater Remediation Wells</u>	15A NCAC 02C .0225
<u>Salinity Barrier Wells</u>	15A NCAC 02C .0226
<u>Stormwater Drainage Wells</u>	15A NCAC 02C .0227
<u>Subsidence Control Wells</u>	15A NCAC 02C .0228
<u>Tracer Wells</u>	15A NCAC 02C .0229
<u>Other Wells</u>	15A NCAC 02C .0230
<u>Abandonment and Change-of-Status of Injection Wells and S...</u>	15A NCAC 02C .0240
<u>Variance</u>	15A NCAC 02C .0241
<u>Delegation</u>	15A NCAC 02C .0242
<u>Particulates from Fugitive Dust Emission Sources</u>	15A NCAC 02D .0540
<u>Definitions</u>	15A NCAC 02D .1801
<u>Control of Odors from Animal Operations Using Liquid Anim...</u>	15A NCAC 02D .1802
<u>Best Management Plans for Animal Operations</u>	15A NCAC 02D .1803
<u>Reporting Requirements for Animal Operations</u>	15A NCAC 02D .1804
<u>Control and Prohibition of Odorous Emissions</u>	15A NCAC 02D .1806
<u>Determination of Maximum Feasible Controls for Odorous Em...</u>	15A NCAC 02D .1807
<u>Evaluation of New or Modified Swine Farms</u>	15A NCAC 02D .1808
<u>Open Burning: Purpose: Scope</u>	15A NCAC 02D .1901
<u>Definitions</u>	15A NCAC 02D .1902
<u>Open Burning Without an Air Quality Permit</u>	15A NCAC 02D .1903
<u>Air Curtain Incinerators</u>	15A NCAC 02D .1904
<u>Regional Office Locations</u>	15A NCAC 02D .1905
<u>Delegation to County Governments</u>	15A NCAC 02D .1906
<u>Multiple Violations Arising from a Single Episode</u>	15A NCAC 02D .1907
<u>Scope</u>	15A NCAC 02T .1601
<u>Definitions</u>	15A NCAC 02T .1602
<u>Application Submittal</u>	15A NCAC 02T .1604
<u>Design Criteria</u>	15A NCAC 02T .1605
<u>Setbacks</u>	15A NCAC 02T .1606
<u>Monitoring and Reporting Requirements</u>	15A NCAC 02T .1607
<u>Requirements for Closure</u>	15A NCAC 02T .1608
COASTAL RESOURCES COMMISSION	
<u>Civil Penalties</u>	15A NCAC 07J .0409
ARCHITECTURE, BOARD OF	
<u>Unauthorized Practice</u>	21 NCAC 02 .0211

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Definitions</u>	21 NCAC 12	.0201
<u>Classification</u>	21 NCAC 12	.0202
<u>License Limitations: Eligibility</u>	21 NCAC 12	.0204
<u>Qualifier</u>	21 NCAC 12	.0205
<u>Application for Licensure</u>	21 NCAC 12	.0303
<u>Character References</u>	21 NCAC 12	.0308
<u>Subject Matter</u>	21 NCAC 12	.0402
<u>License Granted</u>	21 NCAC 12	.0501
<u>Renewal of License</u>	21 NCAC 12	.0503
<u>Application for Payment</u>	21 NCAC 12	.0903

ELECTROLYSIS EXAMINERS, BOARD OF

<u>Fees</u>	21 NCAC 19	.0201
<u>Application for Licensure</u>	21 NCAC 19	.0202
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21 NCAC 19	.0203
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21 NCAC 19	.0204
<u>Offices</u>	21 NCAC 19	.0403
<u>Environmental Control and Housekeeping</u>	21 NCAC 19	.0408
<u>Client Evaluation</u>	21 NCAC 19	.0409
<u>Hepatitis B Virus (HBV) Vaccination</u>	21 NCAC 19	.0410
<u>Standard Precautions for Disease Control and Prevention</u>	21 NCAC 19	.0412
<u>Supervising Physician</u>	21 NCAC 19	.0501
<u>Curriculum</u>	21 NCAC 19	.0601
<u>Application for and Renewal of School Certification</u>	21 NCAC 19	.0602
<u>School Equipment</u>	21 NCAC 19	.0608
<u>Equipment/Student and Teacher Ratio</u>	21 NCAC 19	.0613
<u>Equipment Endorsements and Sales Prohibited</u>	21 NCAC 19	.0619
<u>Continuing Education Requirements, License Renewal, Reins...</u>	21 NCAC 19	.0701
<u>Board Approval of Courses</u>	21 NCAC 19	.0702
<u>Computation of Continuing Education Units</u>	21 NCAC 19	.0703

STATE HUMAN RESOURCES COMMISSION

<u>Employment of Relatives</u>	25 NCAC 011	.1702
<u>Provisions for Tentative Temporary Classifications</u>	25 NCAC 011	.1805
<u>Posting and Announcement of Vacancies</u>	25 NCAC 011	.1902
<u>Applicant Information and Application</u>	25 NCAC 011	.1903
<u>Selection</u>	25 NCAC 011	.1905
<u>Promotion</u>	25 NCAC 011	.2003
<u>Other Pay</u>	25 NCAC 011	.2105
<u>Dismissal for Unsatisfactory Performance of Duties</u>	25 NCAC 011	.2302
<u>Dismissal for Grossly Inefficient Job Performance</u>	25 NCAC 011	.2303
<u>Dismissal for Unacceptable Personal Conduct</u>	25 NCAC 011	.2304
<u>Written Warning</u>	25 NCAC 011	.2305
<u>Disciplinary Suspension Without Pay</u>	25 NCAC 011	.2306
<u>Demotion</u>	25 NCAC 011	.2307
<u>Appeals</u>	25 NCAC 011	.2310

LIST OF APPROVED TEMPORARY RULES
August 15, 2019 Meeting

ELECTIONS AND ETHICS ENFORCEMENT, BOARD OF

Voting Procedures 08 NCAC 10B .0103

ELECTIONS, STATE BOARD OF

Determination of Reasonable Resemblance at Check-In 08 NCAC 17 .0101

Determination of Reasonable Resemblance by Judges of Elec... 08 NCAC 17 .0102

Identification Required of Curbside Voters 08 NCAC 17 .0103

Opportunity to Update Name or Address After Reasonable Re... 08 NCAC 17 .0104

Declaration of Religious Objection to Photograph 08 NCAC 17 .0105

Signage Notifying One-Stop Voters of the Option to Reques... 08 NCAC 17 .0106

Photo Identification for Absentee Ballots 08 NCAC 17 .0109

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

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

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

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
18	CPS	06339	7/17/2019	Brenda Rene Branch	v.	North Carolina Crime Victims Compensation Commission	Lassiter
18	DHR	05219	7/2/2019	Nicole Baines Sauls	v.	NC Department of Health & Human Services Divison of Health Service Regulations	Jacobs
18	DHR	07276	7/29/2019	Audiasha Walker	v.	Department of Health and Human Services, Division of Health Service Regulation	Sutton
19	DHR	00851	7/25/2019	Debra P Dennis	v.	DHHS DHSR	Sutton
19	DHR	02667	7/12/2019	E C Canada & Associates Inc Timothy DeVane Daniel Canada Ethelean Canada and Dwight Canada	v.	Special Nutrition Programs Nutrition Services Branch Division of Public Health Womens and Childrens Health Section	Overby
19	DHR	03052; 03053; 03054	7/12/2019	Sherry Gentry/ HOPE; Sandra Kirkman/ HOPE; Douglas Jackson/HOPE	v.	NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program	Overby
19	DOJ	01620	7/29/2019	Randy Camacho	v.	NC Sheriffs Education and Training Standards Commission	Bawtinhimer
18	EDC	07001	7/3/2019	Kristyn Daney	v.	State Board of Education	May

CONTESTED CASE DECISIONS

				<u>Unpublished</u>			
19	ABC	00212	7/29/2019	Mr and Mrs Nunez Enterprise LLC Tabu Bar and Lounge	v.	Alcoholic Beverage Control Commission	Mann
19	ABC	02353	7/26/2019	NC Alcoholic Beverage Control Commission	v.	Tipsy Crow LLC T/A Tipsy Crow	Mann
19	ABC	03293	7/9/2019	Town of Wrightsville Beach North Carolina	v.	North Carolina Alcoholic Beverage Control Commission	Culpepper
19	CPS	02112	7/8/2019	Alex C Williams	v.	NC Crime Victims Compensation Commission	Mann
19	CPS	02113	7/8/2019	Ray Darnell Smith Jr	v.	NC Crime Victims Compensation Commission	Mann
18	CSE	06941	7/8/2019	Michael T Holloway	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Jacobs
18	CSE	06986	7/12/2019	Thomas N Baker III	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	07083	7/2/2019	Sharon F Springfield	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
19	CSE	00009	7/24/2019	Kory Lee Helm	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Mann
19	CSE	00147	7/11/2019	Larri Hillian	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Mann
19	CSE	00833	7/25/2019	Ollie L Shamburger Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Mann
19	CSE	01321	7/8/2019	Rodney K Kirby	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Jacobs
19	CSE	01504	7/22/2019	Ronald L Roberts	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
19	CSE	01872	7/26/2019	Derrick Nicholson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	02532	7/24/2019	Cory T Wilkerson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	03357	7/1/2019	Luigi Alessandro Jac Lorfilms	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
19	CSE	03937	7/29/2019	Jorge A Salaverria	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Bawtinheimer

CONTESTED CASE DECISIONS

18	DCS	05919	7/16/2019	Alexis McNeil	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DCS	02534	7/5/2019	Willie J Moss	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	DHR	00925	7/9/2019	Mamie Covington	v.	Health Care Registry	Jacobs
19	DHR	01589	7/19/2019	Marilene Comai Gilewala	v.	Department of Health and Human Services Division of Health Service Regulation	Malherbe
19	DHR	01873	7/8/2019	Iryna Martynyuk Vals Place Inc	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Jacobs
19	DHR	01927	7/2/2019	Adline Evans Patterson	v.	Department of Health and Human Services, Division of Health Service Regulation	May
19	DHR	01930	7/8/2019	Sharpe and Williams Kesha Spaulding	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Mann
19	DHR	02055	7/8/2019	Iryna Martynyuk Vals Place Inc	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Jacobs
19	DHR	02214	7/19/2019	Janice Mabe	v.	Rockingham County Department of Social Services	May
19	DHR	02457	7/8/2019	Natasia Nicole Knight	v.	North Carolina Health and Human Services, Division of Health Service Regulation	Jacobs
19	DHR	02793	7/18/2019	Samantha Davis	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Malherbe
19	DHR	02905	7/24/2019	Voca dba Community Alternative NC	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section 2718 Mail Service Center Raleigh NC 27699-2718	Sutton
19	DHR	03064	7/24/2019	Litoya Mikel	v.	NC Department of Health and Human Services	Sutton
19	DOJ	02114	7/9/2019	Lydia Waddell	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
19	DOJ	02496	7/29/2019	Enricque Boyd	v.	North Carolina Criminal Justice Education and Training Standards Commission	May
19	DOJ	02982	7/15/2019	Justin Ryan Thomas	v.	NC Sheriffs Education and Training Standards Commission	Elkins
19	INS	01906	7/8/2019	Dr Daniel N Adams	v.	North Carolina State Health Plan	Jacobs
19	SOS	01866	7/22/2019	Stanley Bernard Anderson	v.	Secretary of State	May
19	UNC	01645	7/19/2019; 7/29/2019	Janet Davis	v.	University of North Carolina Hospitals	Mann