

STATE OF NORTH CAROLINA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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**MEDICAL CARE COMMISSION QUARTERLY MEETING  
DIVISION OF HEALTH SERVICE REGULATION  
801 BIGGS DRIVE  
RALEIGH, NC 27603  
CONFERENCE ROOM #104**

FRIDAY, AUGUST 10, 2018  
9:00 A.M.

AGENDA

- I. Meeting Opens**
- II. Chairman’s Comments** – Dr. John A. Fagg will comment on matters of importance to the Commission. Does anyone have a conflict of interest with any agenda item before the Commission today?
- III. Approval of Minutes (Action Item)** from the May 10, 2018 Medical Care Commission Quarterly Meeting and the May 31, 2018 and June 1, 2018 Planning Meeting is requested (**See Exhibits A – A/1**).
- IV. North Carolina Board of Ethics Letter**.....Dr. John Fagg
- North Carolina Board of Ethics letter was received for the following member and is noted for a potential conflict of interest:
- Dr. Paul R. G. Cunningham (**See Exhibit A/2**)
- V. Bond Program Activities** .....Geary W. Knapp
- A.** Quarterly Report on Bond Program (**See Exhibit B**)
- B.** The following notices and non-action items were received by the Executive Committee:
- June 28, 2018 – Iredell Memorial Hospital Series 2007 (Conversion)**
- New Index Interest Rate and Holding Period
- June 28, 2018 – CN Davis Series 2012 (Redemption)**
- Outstanding Balance - \$21,470,000
  - Funds provided by Public Finance Authority (Wisconsin)
- July 25, 2018 – Hugh Chatham Memorial Hospital Series 2008 (Conversion)**
- New Index Interest Rate and Holding Period
- July 25, 2018 – Duke Health Series 2012B (Conversion)**
- New Bank Bought Index Floating Rate

**July 26, 2018 – First Health Series 2017A, 2017B, & 2017C (Conversion)**

- New Direct Purchase Rate

**August 1, 2018 – UNC Chatham Hospital Series 2007 (Redemption)**

- Outstanding Balance - \$23,200,000
- Funds provided by UNC system (cash)

**C. The Executive Committee held telephone conference call meetings on the following dates (Action Items):**

- **June 6, 2018** – The Executive Committee granted (1) final approval to an amendment to the Trust Agreement for CaroMont Health Series 2003 and (2) final approval for the sale of bonds, the proceeds of which are to be loaned to Chapel Hill Residential Retirement Center, d/b/a Carol Woods (See Exhibit B/1).
- **July 16, 2018** – The Executive Committee granted (1) final approval to amendments to Trust Agreements for Presbyterian Homes Series 2015, 2016A, and 2016B, (2) final approval to an amendment to the Trust Agreement for Hugh Chatham Memorial Series 2008, and (3) final approval to an amendment to the Trust Agreement for DePaul Series 2007A (See Exhibit B/2).

**VI. Bond Project (Action Item)**

**A. Pines at Davidson.....Geary W. Knapp & Steve Lewis**

**Resolution:** The Commission grants preliminary approval to a project for the Pines at Davidson to provide funds, to be used, together with other available funds, to:

- Construct a two story, 38,354 sq. ft. skilled nursing addition with 20 beds on each floor for a total of 40 SNF beds.
- Construct two independent living apartment buildings, each containing 19 one and two bedroom apartments on 4 floors. The total area of both buildings is 79,586 sq. ft.
- Reconfigure portions of the existing Community Center to create three new dining areas totaling 26,459 sq. ft.
- Renovate 2,283 sq. ft. of the Assisted Living dining area.
- Add a new 3,426 sq. ft. fitness area to the current wellness center.
- Site work necessary for revisions and additions to parking areas.

Capital expenditures for new construction shall be included as listed below, all in accordance with a preliminary application, plans and specifications and participation as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal amount of bonds to be issued	<u>\$72,384,000</u>
<b>Total Sources</b>	<b>\$72,384,000</b>

## ESTIMATED USES OF FUNDS

Construction Contracts	\$49,944,000
Construction Contingency (3% of Construction Contracts)	2,497,000
Architect Fees	4,496,000
Moveable Equipment	1,500,000
Interior Design	292,350
Special Inspections	125,000
Surveyor	106,975
Food Consultant	70,342
Legal (Construction, CON, NCDOI)	50,000
Project Management	45,440
CON Fee	50,000
CON Consultant	44,854
Soil Testing	42,000
Actuary Fees	40,389
Wetland Consultant	21,650
Focus Group Consultant	21,000
Marketing Costs	1,520,000
Low Voltage (Security, Access Control, Nurse Call, E-call)	1,550,000
Bond Interest during Construction	4,730,000
Debt Service Reserve Fund	3,263,000
Underwriter Discount/Placement Fee	1,200,250
Feasibility Study Fee	150,000
Accountant Fee	25,000
Corporation Counsel	55,000
Bond Counsel	115,000
Financial Advisor	50,000
Trustee Fee	10,000
Trustee Counsel	15,000
Bank Origination Fee	15,000
Bank Counsel	50,000
Rating Agencies	85,000
Printing Cost	7,500
DHSR Reimbursables (G.S. § 131-E-267)	25,000
Local Government Commission	8,750
Underwriter Counsel & Blue Sky Fee	62,500
Survey/Title/ Real Estate Related Fee	100,000
<b>Total Uses</b>	<b>\$72,384,000</b>

Tentative approval is given with the understanding that the governing board of the Pines at Davidson accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. Any required certificate of need must be in effect at the time of the issuance of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance of bonds.

4. The project must, in all respects, meet requirements of G.S. § 131A (Health Care Facilities Finance Act).
5. The Executive Committee of the Commission is delegated the authority to approve the issuance of bonds for this project and may approve the issuance of such greater principal amount of the loan as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).
6. The bonds or notes shall be sold in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its residents.
7. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the “Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.
8. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRCs as adopted.
9. The borrower will furnish, prior to the sale of or issuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.

Based on information furnished by applicant, the project is:

- |  |   |     |       |    |       |     |
|--|---|-----|-------|----|-------|-----|
| 1. Financially feasible                          | ✓ | Yes | _____ | No | _____ | N/A |
| 2. Construction and related costs are reasonable | ✓ | Yes | _____ | No | _____ | N/A |

See **Exhibit F** for compliance and selected application information.

**VII. Old Business (Action Items)**

**A. Rules for Adoption (Discuss Rules and Comments Submitted)**

Hospital Construction Rules..... Nadine Pfeiffer & Steven Lewis

Replace with American Society of Healthcare Engineering’s Facility Guideline Institute (FGI) guidelines pursuant to Session Law 2017-174

- 10A NCAC 13B .6003, .6105, and .6228 (See Exhibits C – C/3)

**B. Periodic Review of Existing Rules (Final Category Determination)**

Hospice Licensing Rules.....Nadine Pfeiffer, Clarence Ervin, & Steven Lewis

Hospice licensing rules need comments review and final report approval

- 10A NCAC 13K (See Exhibit D – D/3)

**VIII. New Business (Action Item)**

**A. Rules for Initiating Rulemaking Approval**

Hospital Rules – Construction Requirements.....Nadine Pfeiffer & Steven Lewis

Readoption of five rules following Periodic Review

- 10A NCAC 13B .3102, .6101, .6102, .6103 and .6207 (See Exhibits E – E/3)

**IX. Refunding of Commission Bond Issues.....Geary W. Knapp**

**Recommended:**

**WHEREAS**, the bond market is in a period of generally fluctuating interest rates, and

**WHEREAS**, in the event of decline of rates during the next quarter, refunding of certain projects could result in significant savings in interest expense thereby reducing the cost of health care to patients, and

**WHEREAS**, the Commission will not meet again until November 2, 2018 in Raleigh, North Carolina;

**THEREFORE, BE IT RESOLVED;** that the Commission authorize its Executive Committee to approve projects involving the refunding of existing Commission debt between this date and November 2, 2018.

**X. Adjournment – A motion to adjourn is requested.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 MEDICAL CARE COMMISSION QUARTERLY MEETING  
 DUKE MEDICAL CENTER  
 MEDICAL CENTER BOARD ROOM #1170 B  
 40 DUKE MEDICINE CIRCLE  
 DURHAM, NORTH CAROLINA 27710  
 PLANNING MEETING  
 WEDNESDAY, MAY 9, 2018  
 3:00 P.M.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 MEDICAL CARE COMMISSION QUARTERLY MEETING  
 DUKE MEDICAL CENTER  
 MEDICAL CENTER BOARD ROOM #1170 B  
 40 DUKE MEDICINE CIRCLE  
 DURHAM, NORTH CAROLINA 27710  
 THURSDAY, MAY 10, 2018  
 9:00 A.M.**

**MINUTES**

**I. MEDICAL CARE COMMISSION MEETING – MAY 9, 2018**

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>
John A. Fagg, M.D., Chairman Joseph D. Crocker, Vice-Chairman Robert S. Alphin, M.D. Vickie L. Beaver Paul R.G. Cunningham, M.D. Charles H. Hauser Linwood B. Hollowell, III Albert F. Lockamy, Jr., RPh John J. Meier, IV, M.D. Karen E. Moriarty J. William Paugh Devdutta G. Sangvai, M.D. Robert E. Schaaf, M.D. Patrick D. Sebastian, (Joined Via Web-Ex)	Eileen C. Kugler, RN, MSN, MPH, FNP Kenly P. Lewis, D.D.S. Jeffrey S. Wilson
<b><u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u></b> Geary W. Knapp, JD, CPA, Assistant Secretary, MCC Emery Milliken, Deputy Director, DHSR Steven Lewis, Chief, Construction Section, DHSR Jeff Harms, Engineering Supervisor, Construction Section, DHSR Bethany Burgon, Assistant Attorney General, NCDOJ Tom Mitchell, Chief, OEMS Chuck Lewis, Assistant Chief, OEMS	

Roger Kiser, Administrative Officer, III, OEMS Will Ray, Field Operations Manager, OEMS Brad Thompson, Administrative Officer II, OEMS Beverly Speroff, Assistant Chief, Nursing Home Licensure Megan Lamphere, Chief, Adult Care Licensure Section Tichina Hamer, Director of Programs, ACLS Doug Barrick, Social Services Program Coordinator, ACLS Nadine Pfeiffer, Rules Review Manager, DHSR Kathy Larrison, Auditor, MCC Crystal Abbott, Auditor, MCC Alice Creech, Executive Assistant, MCC	
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**COMMISSION ACTION:**

The Medical Care Commission had its Planning Meeting on Wednesday, May 9, 2018 to discuss rules, a project, and other topics. The agenda was referred without action to the Medical Care Commission Meeting on Thursday, May 10, 2018.

**II. MEDICAL CARE COMMISSION MEETING – THURSDAY, MAY 10, 2018**

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>
John A. Fagg, M.D., Chairman Joseph D. Crocker, Vice-Chairman Robert S. Alphin, M.D. Vickie L. Beaver Paul R.G. Cunningham, M.D. Charles H. Hauser Linwood B. Hollowell, III Albert F. Lockamy, Jr., RPh John J. Meier, IV, M.D. Karen E. Moriarty J. William Paugh Devdutta G. Sangvai, M.D. Robert E. Schaaf, M.D. Patrick D. Sebastian, (Joined Via Web-Ex) Jeffrey S. Wilson  <b><u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u></b> Gearsy W. Knapp, JD, CPA, Assistant Secretary, MCC Emery Milliken, Deputy Director, DHSR Steven Lewis, Chief, Construction Section, DHSR Jeff Harms, Engineering Supervisor, Construction Section, DHSR	Eileen C. Kugler, RN, MSN, MPH, FNP Kenly P. Lewis, D.D.S.

Bethany Burgon, Assistant Attorney General, NCDOJ Tom Mitchell, Chief, OEMS Chuck Lewis, Assistant Chief, OEMS Roger Kiser, Administrative Officer, III, OEMS Will Ray, Field Operations Manager, OEMS Brad Thompson, Administrative Officer II, OEMS Beverly Speroff, Assistant Chief, Nursing Home Licensure Megan Lamphere, Chief, Adult Care Licensure Section Tichina Hamer, Director of Programs, ACLS Doug Barrick, Social Services Program Coordinator, ACLS Nadine Pfeiffer, Rules Review Manager, DHSR Kathy Larrison, Auditor, MCC Crystal Abbott, Auditor, MCC Alice Creech, Executive Assistant, MCC	
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**OTHER ATTENDANCE: (See Exhibit I)**

**III. CHAIRMAN’S COMMENTS -** Dr. John A. Fagg called the meeting to order at 9:00 a.m. He thanked the Commission for their attendance and introduced the newest Commission member, Dr. Paul R.G. Cunningham. Dr. Fagg asked if anyone had a conflict of interest with any agenda item before the Commission.

**IV. APPROVAL OF MINUTES** from the February 9, 2018 Medical Care Commission Quarterly Meeting conference call was requested (see Exhibit A).

**COMMISSION ACTION:** Motion to approve the Minutes was made by Mr. Joe Crocker, seconded by Dr. Sangvai, and unanimously approved.

**V. BOND PROGRAM ACTIVITIES** .....Geary W. Knapp

**A. Quarterly Report on Bond Program (Attached as Exhibit B)**

**B. The following notices and non-action items were received by the Executive Committee:**

**April 2, 2018 – CN Davis Series 2012 (Conversion)**

- New LIBOR Index Interest Rate Period

**April 12, 2018 – Lower Cape Fear Hospice (Redemption)**

- Outstanding Balance - \$1,788,000
- Funds provided by cash reserve

**April 24, 2018 – Duke University Series 2005A, 2016B, & 2016C (Conversion)**

- New Bank-Bought Index Floating Rate Period



**May 1, 2018 – United Methodist Retirement Homes 2014A & 2014B (Conversion)**

- New Bank-Bought Rate Period

**May 1, 2018 – Friends Homes 2011 (Conversion)**

- New Bank-Bought Rate Period

**May 3, 2018 – Hospice and Palliative Care Center of Alamance-Caswell 2008 (Redemption)**

- Outstanding Balance - \$3,800,000
- Funds provided by cash reserve

C. The Executive Committee held a conference call meeting on the following date:

**April 5, 2017** – The Executive Committee granted (1) final approval to an amendment to a Master Lease and Sublease Agreement for Duke University Health System, Inc. and (2) preliminary approval for a refunding transaction for the sale of bonds, the proceeds of which are to be loaned to CaroMont Health, Incorporated. (**Attached as Exhibit B/1**)

**COMMISSION ACTION:** Motion was made to approve the Executive Committee actions by Dr. Devdutta Sangvai, seconded by Dr. John Meier, and unanimously approved.

**VI. BOND PROJECTS**

**A. CaroMont Health.....Geary W. Knapp**

Series Resolution Authorizing the Sale and Issuance of North Carolina Medical Care Commission Hospital Revenue Refunding Bonds (CaroMont Health), Series 2018 (the “Taxable Bonds”) and a Subsequent Series of Tax-Exempt Bonds (the “Tax-Exempt Bonds”) to Refund the Taxable Bonds.

WHEREAS, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities; and

WHEREAS, Gaston Memorial Hospital, Incorporated and CaroMont Health Services, Inc. (collectively, the “Corporations”) and CaroMont Health, Inc. (the “Parent”) are each a North Carolina nonprofit corporation and a “nonprofit agency” within the meaning and intent of the Act, which operate, by themselves and through their controlled affiliates, certain health care facilities; and

WHEREAS, the Corporations and the Parent have made application to the Commission for a loan to be made to the Corporations and the Parent from the proceeds of North Carolina Medical Care

Commission Hospital Revenue Refunding Bonds (CaroMont Health), Series 2018 (the “Taxable Bonds”) to be issued by the Commission for the purpose of providing funds, together with other available funds, to (a) refund a portion of the Commission’s outstanding North Carolina Medical Care Commission Hospital Revenue Bonds (CaroMont Health), Series 2008 (the “Refunded Bonds”), and (b) pay the fees and expenses incurred in connection with the authorization, sale and issuance of the Taxable Bonds and the Tax-Exempt Bonds (hereinafter defined) (the Taxable Bonds, together with the Tax-Exempt Bonds, being collectively referred to herein as the “Bonds”); and

WHEREAS, pursuant to the plan of finance set forth in such application, the Corporations and the Parent also desire for the Commission to provide for the future sale and issuance by the Commission of a subsequent issue of tax-exempt bonds (the “Tax-Exempt Bonds”) in an aggregate principal amount equal to the outstanding principal amount of the Taxable Bonds at the time of issuance of the Tax-Exempt Bonds for the purpose of refunding and redeeming the Taxable Bonds; and

WHEREAS, the Executive Committee of the Commission has, by resolution adopted on April 5, 2018, approved the issuance of the Bonds, subject to compliance with the conditions set forth in such resolution, and the Corporations and the Parent have complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented to officers and staff of the Commission drafts or copies, as applicable, of the following documents relating to the issuance of the Bonds:

(a) Trust Agreement, to be dated as of May 1, 2018 (the “Trust Agreement”), between the Commission and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Bond Trustee”), together with the form of the Bonds attached thereto;

(b) Loan Agreement, to be dated as of May 1, 2018 (the “Loan Agreement”), among the Commission, the Corporations and the Parent;

(c) Contract of Purchase, to be dated the date of delivery thereof (the “Contract of Purchase”), between the North Carolina Local Government Commission (the “LGC”) and TD Bank, N.A. (the “Bank”), and approved by the Commission and the Parent, relating to the sale of the Taxable Bonds;

(d) Forward Purchase Option Agreement, to be dated the date of delivery thereof (the “Forward Agreement”), among the LGC, the Bank, the Commission and the Parent, relating to the sale of the Tax-Exempt Bonds;

(e) Supplemental Indenture for Obligation No. 14, to be dated as of May 1, 2018 (“Supplement No. 14”), among the Corporations, the Parent and CaroMont Ambulatory Services, LLC (“CAS” and together with the Corporations and the Parent, the “Members of the Obligated Group”) and The Bank of New York Mellon Trust Company, N.A., as master trustee (in such capacity, the “Master Trustee”), under the Master Trust Indenture, dated as of October 15, 1995 (as amended and supplemented, the “Master Indenture”), among the Corporations, the Parent and Wachovia Bank of North Carolina, N.A. (succeeded by Master Trustee);

(f) Obligation No. 14, to be dated the date of delivery thereof (“Obligation No. 14”), from the Members of the Obligated Group to the Commission;

(g) Supplemental Indenture for Obligation No. 15, to be dated as of May 1, 2018 (“Supplement No. 15” and together with Supplement No. 14, the “Supplemental Indentures”), among the Members of the Obligated Group and the Master Trustee;

(h) Obligation No. 15, to be dated the date of delivery thereof (“Obligation No. 15 and, together with Obligation No. 14, the “Obligations”), from the Members of the Obligated Group to the Bank;

(i) the Master Indenture;

(j) the Escrow Deposit Agreement, to be dated as of May 1, 2018 (the “Escrow Agreement”), among the Commission, the Parent and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”), relating to the refunding and redemption of the Refunded Bonds;

(k) the Continuing Covenant Agreement, to be dated as of May 1, 2018 (the “Covenant Agreement”), among the Corporations, the Parent and the Bank; and

(l) the Interest Rate Lock Agreement, to be dated the date of delivery thereof (the “Rate Lock Agreement”), among the Corporations, the Parent and the Bank; and

WHEREAS, the Commission has determined that the Parent and the other Members of the Obligated Group are financially responsible and capable of fulfilling their respective obligations, as applicable, under each of the documents described above to which the Parent and the other Members of the Obligated Group are a party; and

WHEREAS, the Commission has determined that the public interest will be served by the proposed refunding and that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

NOW THEREFORE, BE IT RESOLVED by the North Carolina Medical Care Commission as follows:

Section 1. Capitalized terms used in this Series Resolution and not defined herein shall have the meanings given such terms in the Trust Agreement, the Loan Agreement and the Master Indenture.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of (a) the Taxable Bonds in an aggregate principal amount not-to-exceed \$43,000,000 and (b) the Tax-Exempt Bonds in an aggregate principal amount equal to the outstanding principal amount of the Taxable Bonds at the time of issuance of the Tax-Exempt Bonds. The Taxable Bonds and the Tax-Exempt Bonds shall each be dated as of their respective dates of delivery and shall each mature, subject to prior redemption as provided therein, on February 15, 2035. The Taxable Bonds shall initially bear interest at a rate not-to-exceed 4.05% per annum, and the Tax-Exempt Bonds, if and when issued shall

initially bear interest at a rate not-to-exceed 3.30% per annum, all subject to adjustment in the manner provided in the Trust Agreement. The Bonds will be subject to mandatory tender for purchase ten (10) years from the date of issuance of the Taxable Bonds. The preliminary mandatory sinking fund redemption schedule for the Taxable Bonds is set forth in Exhibit A hereto.

The Bonds shall be initially issued as fully registered bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000 as described in the Trust Agreement. While the Bonds bear interest at the Fixed Bank Rate (as defined in the Trust Agreement), interest on the Bonds shall be payable on the first Business Day of each calendar month. Payments of principal of and interest on the Bonds shall be forwarded by the Bond Trustee to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to optional, extraordinary optional and mandatory sinking fund redemption and optional and mandatory tender for purchase and shall be subject to conversion to different interest rate modes, at the times, upon the terms and conditions and, with respect to redemptions and tenders, at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Taxable Bonds shall be applied as provided in Section 2.08 of the Trust Agreement, and the proceeds of the Tax-Exempt Bonds (if and when issued) shall be applied on the date of issuance thereof to the redemption of the Taxable Bonds.

Section 5. The forms, terms and provisions of the Loan Agreement, the Trust Agreement and the Escrow Agreement are hereby approved in all respects, and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman for such purpose and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Loan Agreement, the Trust Agreement and the Escrow Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary or appropriate, including but not limited to changes, modifications and deletions necessary to incorporate the final terms of the Bonds as shall be set forth in the Contract of Purchase, the Rate Lock Agreement and the Forward Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. The forms, terms and provisions of the Contract of Purchase and the Forward Agreement are hereby approved in all respects and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman for such purpose is hereby authorized and directed to execute and deliver the Contract of Purchase and the Forward Agreement in substantially the forms presented at this meeting, together with such changes, modifications, insertions and deletions as such Chairman, the Vice Chairman or such member of the Commission, with the advice of counsel, may deem necessary or appropriate, including but not limited to changes, modifications and deletions necessary to incorporate the final terms of the Bonds; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 7. The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman for such purpose and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such form of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary or appropriate and consistent with the Trust Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 8. The forms, terms and provisions of the Supplemental Indentures, the Obligations, the Covenant Agreement and the Rate Lock Agreement are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman or Vice Chairman, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Trust Agreement by the Commission shall be conclusive evidence of the approval of such documents by the Commission.

Section 9. The Commission hereby approves the action of the LGC in authorizing the private sale of the Taxable Bonds to the Bank in accordance with the Contract of Purchase and the sale of the Tax-Exempt Bonds to the Bank, if and when issued, pursuant to the Forward Agreement, in each case at a purchase price equal to 100% of the principal amount thereof.

Section 10. Upon execution of the Bonds in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon compliance with the provisions of Section 2.08 of the Trust Agreement, with respect to the Taxable Bonds, and Section 2.16 of the Trust Agreement, with respect to the Tax-Exempt Bonds, the Bond Trustee shall deliver the Bonds to the Bank against payment therefor.

Section 11. The Bank of New York Mellon Trust Company, N.A. is hereby appointed as the Bond Trustee for the Bonds and the Escrow Agent for the Refunded Bonds.

Section 13. S. Mark Payne, Secretary of the Commission, Geary W. Knapp, Assistant Secretary, Kathy C. Larrison, Auditor, and Crystal Watson-Abbott, Auditor, for the Commission, are each hereby appointed a Commission Representative (as that term is defined in the Loan Agreement) of the Commission with full power to carry out the duties set forth therein.

Section 14. The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman, the Secretary and any Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the

Loan Agreement, the Trust Agreement, the Escrow Agreement, the Contract of Purchase and the Forward Agreement.

Section 15. A comparison of the professional fees as set forth in the resolution of the Executive Committee of the Commission granting preliminary approval of this financing with the actual professional fees incurred in connection with the financing is set forth as Exhibit B hereto.

Section 16. This Series Resolution shall take effect immediately upon its adoption.

ADOPTED this 10<sup>th</sup> day of May, 2018.

EXHIBIT A

**Mandatory Sinking Fund Redemption Schedule\***

<u>February 15,</u>	<u>Amount</u>	<u>February 15,</u>	<u>Amount</u>
2019	\$ 25,000	2028	\$2,195,000
2020	25,000	2029	2,230,000
2021	1,885,000	2030	1,800,000
2022	1,935,000	2031	4,135,000
2023	1,970,000	2032	4,175,000
2024	2,020,000	2033	4,220,000
2025	2,065,000	2034	4,285,000
2026	2,120,000	2035	4,355,000
2027	2,150,000		

\* Preliminary; subject to change upon final pricing.

EXHIBIT B

**PROFESSIONAL FEES**

<u>Professional</u>	<u>Preliminary Approval</u>	<u>Actual*</u>
Financial Advisor	\$ 80,000	\$ 80,000
Accountant/Auditor	35,000	35,000
Bond Counsel	125,000	125,000
Bank Counsel	55,000	55,000
Obligated Group Counsel	80,000	80,000

Trustee (including counsel)	10,062	10,062
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\* Not-to-exceed fees. Includes fees relating to issuance of both Taxable Bonds and Tax-Exempt Bonds.

Statements were given by Mr. Joe Crocker, Mr. Chuck Stafford, Mr. Paul Billow, and Mr. David O'Connor.

**COMMISSION ACTION:** Motion was made to approve the refunding by Dr. Fagg, seconded by Dr. Meier, and unanimously approved.

\*See **Exhibit F** for Bond Sale Approval Form and **Exhibit J** for handout

**B. Moravian Home, Inc. (Salem towne).....G. Knapp, S. Lewis, & J. Harms**

**Resolved:** The Commission grants preliminary approval to a project for Moravian Home, Inc., d/b/a Salem towne (Salem towne) to provide funds (\$38,760,000), to be used, together with other available funds, to **construct 2 new Independent Living buildings**, each containing 28 Independent Living Apartments for a total of 56 apartments, consisting of 48,787 square feet per building with 4 occupied floors above a parking level. The new project is the second part of a three phase campus reposition project. Phase I involved construction of a new Healthcare and Rehabilitation Center, financed in 2015 and completed in 2017. Capital expenditures for new construction shall be included as listed below, all in accordance with a preliminary application, plans and specifications and participation as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal amount of bonds to be issued	\$38,760,000
Equity	<u>320,190</u>
<b>Total Sources</b>	<b>\$39,080,190</b>

**ESTIMATED USES OF FUNDS**

Site Costs (Utility Development and Engineering Fees)	\$ 121,350
Construction Contracts	28,669,585
Construction Contingency (1% of Construction Contract)	289,592
Architect/Engineer Fees and Reimbursements	856,743
Surveys, Tests, Insurance	139,126
Consultant Fees related to Construction	754,099
Marketing Capitalized Costs	1,333,714
Interior Design Costs	73,203
Bond Interest during Construction	3,548,311
Debt Service Reserve Fund	2,195,180

Underwriter Discount/Placement Fee	546,537
Feasibility Study Fee	125,000
Accountant Fee	25,000
Corporation Counsel	65,000
Bond Counsel	125,000
Trustee Fee	15,000
Printing Cost	12,500
DHSR Reimbursables (G.S. 131-E-267)	41,500
Local Government Commission	8,750
Underwriter Counsel	55,000
Blue Sky Fee	5,000
Survey/Title/ Real Estate Related Fee	<u>75,000</u>
<b>Total Uses</b>	<b>\$39,080,190</b>

Tentative approval is given with the understanding that the governing board of Salemtowne accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. Any required certificate of need must be in effect at the time of the issuance of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance of bonds.
4. The project must, in all respects, meet requirements of G.S. § 131A (Health Care Facilities Finance Act).
5. The Executive Committee of the Commission is delegated the authority to approve the issuance of bonds for this project and may approve the issuance of such greater principal amount of the loan as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).
6. The bonds or notes shall be sold in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its residents.
7. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the “Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.



8. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRC’s as adopted.
9. The borrower will furnish, prior to the sale of or issuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.

Based on information furnished by applicant, the project is -

1. Financially feasible	<u>✓</u>	Yes	_____	No	_____	N/A
2. Construction and related costs are reasonable	<u>✓</u>	Yes	_____	No	_____	N/A

Statements were given by Dr. John Fagg, Mr. Joe Crocker, Mr. Charles Hauser, Mr. Steve Lewis, Mr. Jeff Harms, Dr. Paul Cunningham, and Mr. Bill Paugh.

**COMMISSION ACTION:** Motion was made by Dr. Schaaf to approve the project, seconded by Dr. Meier, and unanimously approved.

\*See **Exhibit G** for compliance and selected application information and **Exhibit K** for presentation

**C. Chapel Hill Residential Retirement Center, Inc. (Carol Woods).....Geary W. Knapp**

**Resolved:** The Commission grants preliminary approval to a transaction for The Chapel Hill Residential Retirement Center, Inc., d/b/a Carol Woods (Carol Woods) to **(1)** provide funds, to be used, together with other available funds, to *refund* the North Carolina Medical Care Commission \$30,000,000 Retirement Facilities First Mortgage Revenue Bonds, Series 2010, outstanding as of the date of the refunding in the amount of \$22,470,000 and **(2)** provide funds, to be used, together with other available funds, to *refund* the North Carolina Medical Care Commission \$22,000,000 Retirement Facilities First Mortgage Revenue Bonds, Series 2012, outstanding as of the date of refunding in the amount of \$17,100,000. Both Bond Series were partially hedged with floating rate swaps, which will be terminated and new fixed rate swaps executed. The proposed 2018 Bond Issue and floating to fixed rate swap will produce positive net present value savings, improve cash flow, reduce the average life of the existing bonds, and eliminate basis risk. The proposed transaction is in accordance with an application received as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal amount of bonds to be issued	\$39,570,000
Equity	270,000
Cash to Terminate Swaps	<u>3,976,000</u>
<b>Total Sources</b>	<b>\$43,816,000</b>

### ESTIMATED USES OF FUNDS

Amount to refund Series 2010 Bonds	\$22,470,000
Amount to refund Series 2012 Bonds	17,100,000
Swap Termination Cost	3,976,000
Bank Commitment Fee	15,000
Accountant Fee	10,000
Corporation Counsel	20,000
Bond Counsel	75,000
Trustee Fee	2,500
Local Government Commission Fee	12,500
Bank Counsel	25,000
Financial Advisor	45,000
Swap Advisor	30,000
Title Policy	25,000
Survey	10,000
<b>Total Uses</b>	<b>\$43,816,000</b>

Tentative approval is given with the understanding that the governing board of Carol Woods accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. Financial feasibility must be determined prior to the issuance of bonds.
3. The project must, in all respects, meet requirements of G.S. § 131A (Health Care Facilities Finance Act).
4. The Executive Committee of the Commission is delegated the authority to approve the issuance of bonds for this project and may approve the issuance of such greater principal amount of the loan as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).
5. The bonds or notes shall be sold in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its residents.
6. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the

“Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.

7. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRC’s as adopted.
8. The borrower will furnish, prior to the sale of or issuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.

Based on information furnished by applicant, the project is -

- |  |               |     |               |    |               |     |
|--|---------------|-----|---------------|----|---------------|-----|
| 1. Financially feasible                          | <u>  ✓  </u>  | Yes | <u>      </u> | No | <u>      </u> | N/A |
| 2. Construction and related costs are reasonable | <u>      </u> | Yes | <u>      </u> | No | <u>  ✓  </u>  | N/A |

\*See **Exhibit H** for compliance and selected application information and **Exhibit L** for presentation

Statements were given by Ms. Pat Sprigg, Mr. Ken Reeb, Mr. Richard Marvin, Dr. John Fagg, Mr. Charles Hauser, Dr. Paul Cunningham, and Dr. Robert Alphin.

**COMMISSION ACTION:** Motion was made to approve the project by Dr. Sangvai, seconded by Dr. Meier, and unanimously approved with the recusals of Mrs. Beaver, Dr. Fagg, and Dr. Schaaf.

**D. NC Office of Emergency Services.....Geary W. Knapp & Tom Mitchell**

**Resolved:** The Commission grants preliminary approval to a project for the North Carolina Office of Emergency Medical Services (NCOEMS) to provide funds in the amount of \$556,893 for *upgrades* to the North Carolina Mobile Disaster Hospital. The upgrades are necessary to maintain operational capabilities and ensure readiness for deployment of the Mobile Disaster Hospital. The specific use of the funds is as follows:

<b>BUDGET ESTIMATES</b>		
<i>Activity</i>	<i>Units/Cost</i>	<i>Total Cost</i>
<i>Patient Care</i>		
Patient Headwalls for Expandable Shelters	20/\$1,500.00 per	\$30,000.00
Upgrade X-ray Processors	2/\$27,450.00 per	\$54,900.00
Hospital Beds	20/\$5,482.40 per	\$109,648.00
Life Safety Systems for Patient Care Areas	1/\$12,500.00 per	\$12,500.00
Vacuum and Medical Air Pump Assembly	2/\$116,000.00 per	\$232,000.00
<i>Structural Upgrades</i>		
Hard Sided Connectors for Patient Care Area Structure	12/\$6,600.00 per	\$79,200.00
Expandable Shelters Interior Paint	10/\$2,000.00 per	\$20,000.00
Expandable Shelters Replacement Lights	35/\$47.00 per	\$1,645.00
Machined Brackets for Lights	70/\$12.00 per	\$840.00
Hydraulic Pump System for Lifting Jacks	1/\$2,500.00 per	\$2,500.00
Hydraulic Lifting Jacks for Expandable Shelters	4/\$600.00 per	\$2,400.00
Scissor Jacks for Leveling Expandable Shelters	30/\$25.00 per	\$750.00
Custom Plates and Pins for Scissor Jacks	30/\$20.00 per	\$600.00
Shelter Recondition for Vacuum Pump/Medical Air Holding	1/\$10,000.00 per	\$10,000.00
<b>TOTAL</b>		<b>\$556,893.00</b>

Tentative approval is given with the understanding that NCOEMS accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.
2. The project will continue to be developed pursuant to all applicable North Carolina purchasing guidelines.
3. The project must, in all respects, meet requirements of G.S. § 131A (Health Care Facilities Finance Act).
4. The Executive Committee of the Commission is delegated the authority to approve the final expenditure of funds for this project and may approve the expenditure of such greater amount as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).

\*See **Exhibit M** for presentation

**COMMISSION ACTION:** Motion was made to approve the project by Mr. Hauser, seconded by Mr. Lockamy, and unanimously approved.

**VI. OLD BUSINESS**

**A. Rules for Adoption (Rules, Fiscal Note and Comments)  
(See Exhibits C – C/3)**

Emergency Services and Trauma Rules (Nadine Pfeiffer & Tom Mitchell)  
Amendments to update standards and incorporate changes in practice settings

- 10A NCAC 13P .0102, .0201, .0222, .0301, .0505, .0506, .0904, .1502, and .1505

**COMMISSION ACTION:** Motion was made by Mr. Crocker to approve the adoption of the Emergency Medical Services and Trauma Rules, seconded by Mr. Charles Hauser, and unanimously approved.

**VII. NEW BUSINESS**

**A. Rules for Initiating Rulemaking Approval (Rules & Fiscal Note)  
(See Exhibits D – D/3)**

Hearings: Transfers and Discharge Rules (Nadine Pfeiffer & Beverly Speroff)  
Readoption of three rules following Periodic Review:

- 10A NCAC 14A .0301, .0302, .0303

**COMMISSION ACTION:** Motion was made by Dr. Meier to approve the readoption of the Hearings: Transfers and Discharge Rules, seconded by Mr. Paugh, and unanimously approved.

**B. Periodic Review of Existing Rules (HB 74) (Initial Category Determination)  
(See Exhibits E – E/2)**

Licensing of Family Care Homes Rules (N. Pfeiffer, M. Lamphere, & S. Lewis)  
Initial category determination for:

- 10A NCAC 13G

**COMMISSION ACTION:** Motion was made Mr. Crocker to approve the initial category determination for the Licensing of Family Care Home Licensure Rules, seconded by Dr. Meier, and unanimously approved.

**VIII. REFUNDING OF COMMISSION BOND ISSUES.....Geary W. Knapp**

**RESOLVED:**

**WHEREAS,** the bond market is in a period of generally fluctuating interest rates, and

**WHEREAS**, in the event of decline of rates during the next quarter, refunding of certain projects could result in significant savings in interest expense thereby reducing the cost of health care to patients, and

**WHEREAS**, the Commission will not meet again until August 10, 2018 in Raleigh, North Carolina;

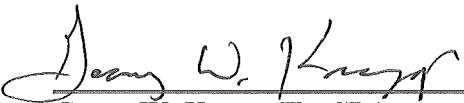
**THEREFORE, BE IT RESOLVED**; that the Commission authorize its Executive Committee to approve projects involving the refunding of existing Commission debt between this date and August 10, 2018.

**COMMISSION ACTION**: Motion was made by Dr. Sangvai, seconded by Mrs. Beaver, and unanimously approved.

**IX. ADJOURNMENT**

There being no further business the meeting was adjourned at 11:15 a.m.

Respectfully Submitted,

  
\_\_\_\_\_  
Geary W. Knapp JD, CPA  
Assistant Secretary

5/21/18  
\_\_\_\_\_  
Date

**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**NORTH CAROLINA MEDICAL CARE COMMISSION PLANNING MEETING**  
**RALEIGH MARRIOTT CRABTREE VALLEY**  
**4500 MARRIOTT DRIVE**  
**RALEIGH, NORTH CAROLINA 27612**  
**DOGWOOD & MAGNOLIA CONFERENCE ROOM**  
**MAY 31, 2018**  
**1:00 P.M.**

**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**NORTH CAROLINA MEDICAL CARE COMMISSION PLANNING MEETING**  
**RALEIGH MARRIOTT CRABTREE VALLEY**  
**4500 MARRIOTT DRIVE**  
**RALEIGH, NORTH CAROLINA 27612**  
**DOGWOOD & MAGNOLIA CONFERENCE ROOM**

**JUNE 1, 2018**  
**9:00 A.M.**

Minutes

**I. MEDICAL CARE COMMISSION PLANNING MEETING – MAY 31, 2018**

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>
John A. Fagg, M.D., Chairman Joseph D. Crocker, Vice-Chairman Vickie L. Beaver Paul R.G. Cunningham, M.D. Charles H. Hauser Linwood B. Hollowell, III Eileen C. Kugler, RN, MSN, MPH, FNP Albert F. Lockamy, Jr., RPh John J. Meier, IV, M.D. J. William Paugh Devdutta G. Sangvai, M.D. Robert E. Schaaf, M.D. Jeffrey S. Wilson	Kenly P. Lewis, D.D.S. Patrick D. Sebastian Karen E. Moriarty
<p><b><u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u></b></p> Mark Payne, Director, DHSR, Secretary, MCC Geary W. Knapp, JD, CPA, Assistant Secretary, MCC Emery Milliken, Deputy Director, DHSR Bethany Burgon, Assistant Attorney General, NCDOJ Steven Lewis, Chief, Construction Section, DHSR Jeff Harms, Engineering Supervisor, Construction Section, DHSR Nadine Pfeiffer, Rules Review Manager, DHSR Kathy Larrison, Auditor, MCC Crystal Abbott, Auditor, MCC Alice Creech, Executive Assistant, MCC	

**II. CHAIRMAN’S COMMENTS**

Dr. Fagg thanked everyone for their attendance and asked the presenters to introduce themselves. He said today’s meeting would be an educational format, and would be an open discussion for both days with no formal voting. Dr. Fagg also noted the attached articles (**See Exhibits A/1 – A/4**) were provided as noteworthy information. The agenda was referred without action to the Medical Care Commission Planning Meeting on June 1, 2018.

**III.** Mr. Allen K. Robertson gave a presentation on the history of the Medical Care Commission and its statutory authority. (**See Exhibit E**)

**IV.** Mr. Barak Richman, Duke University Bartlett Professor of Law and Business Administration gave a presentation on hospital consolidation.

**V.** Mr. Thomas Brewer, Managing Director of Ziegler gave a presentation on the bond selling process. (**See Exhibit F**)

**VI.** Mr. James H. Johnson, Jr, Professor of Strategy and Entrepreneurship of the UNC Kenan-Flagler Business School gave a presentation on diversity in Continuing Care Retirement Homes. (**See Exhibits J; G**)

**VII.** Ms. Nadine Pfeiffer, Rules Review Manager with the Division of Health Service Regulation gave a presentation on the Medical Care Commission rule making process. (**See Exhibits B/1 – B/4**)

**VIII. MEDICAL CARE COMMISSION PLANNING MEETING – JUNE 1, 2018**

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>
John A. Fagg, M.D., Chairman Joseph D. Crocker, Vice-Chairman Robert S. Alphin, M.D. Vickie L. Beaver Paul R.G. Cunningham, M.D. Linwood B. Hollowell, III Eileen C. Kugler, RN, MSN, MPH, FNP Albert F. Lockamy, Jr., RPh John J. Meier, IV, M.D. J. William Paugh Devdutta G. Sangvai, M.D. Robert E. Schaaf, M.D. Jeffrey S. Wilson	Kenly P. Lewis, D.D.S. Patrick D. Sebastian Karen E. Moriarty
<b><u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u></b>	
Mark Payne, Director, DHSR, Secretary, MCC Geary W. Knapp, JD, CPA, Assistant Secretary, MCC Emery Milliken, Deputy Director, DHSR Bethany Burgon, Assistant Attorney General, NCDOJ Steven Lewis, Chief, Construction Section, DHSR Jeff Harms, Engineering Supervisor, Construction Section, DHSR Kathy Larrison, Auditor, MCC Crystal Abbott, Auditor, MCC Alice Creech, Executive Assistant, MCC	

**DANCE** (**See Exhibit K**)



**IX. CHAIRMAN'S COMMENTS**

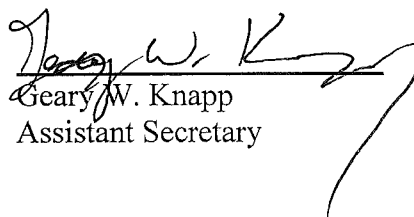
Dr. Fagg welcomed everyone to the meeting and stated the Commission would address problem areas today and would review all MCC policies. Dr. Fagg expressed his gratitude to the Medical Care Commission Staff for putting this meeting together.~

**X.** Mr. Geary Knapp, MCC Assistant Secretary gave presentations on community benefits and Medical Care Commission policies. **(See Exhibits C/1-C/2; D/1-D/2; H; I)**

**XI. ADJOURNMENT**

There being no further business, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

  
Geary W. Knapp  
Assistant Secretary



June 26, 2018

The Honorable Roy A. Cooper, III  
Governor of North Carolina  
20301 Mail Service Center  
Raleigh, NC 27699-0301

*Via Email*

**Re: Evaluation of Statement of Economic Interest Filed by Paul Raymond Cunningham  
Medical Care Commission**

Dear Governor Cooper:

Our office has received **Dr. Paul R. Cunningham's** 2018 Statement of Economic Interest as an appointee to the **Medical Care Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 163A of the North Carolina General Statutes ("N.C.G.S."), also known as the Elections and Ethics Enforcement Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 163A-193(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 163A-157.

**We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.**

The North Carolina Medical Care Commission was created to adopt statewide plans for the construction and maintenance of public and private hospitals, medical centers, and related facilities, including the approval of projects in the amounts of grants-in-aid from funds by both federal and state governments. The Commission is charged with administering the Health Care Facilities Finance Act (N.C.G.S. Chapter 131A) and issues bonds pursuant thereto. In addition, the Commission has the authority to adopt rules, regulations and standards for the different types of hospitals to be licensed, the operation of nursing homes, the inspection, licensure and operation of adult care homes, including personnel requirements of staff employed in adult care homes. The Commission also adopts rules providing for the accreditation of facilities that perform mammography and other procedures.

The Act establishes ethical standards for certain public servants, including conflict of interest standards. N.C.G.S. § 163A-211 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. N.C.G.S. § 163A-216 prohibits public servants from participating in certain official actions from which the public servant, his or her client(s), a member of the public servant's extended family, or a business or non-profit with which the public servant or a member of the public servant's immediate family is associated may receive a reasonably foreseeable financial benefit.

Dr. Cunningham will fill the role of an At Large member on the Commission. Dr Cunningham is the Dean of the Brody School of Medicine at East Carolina University and a member of both the North Carolina Medical Society and the Institute of Medicine. As such, he has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should these entities come before the Commission for official action.

In addition to the conflicts standards noted above, N.C.G.S. § 163A-212 prohibits public servants from accepting gifts, directly or indirectly (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gifts restrictions are set out in N.C.G.S. § 163A-212(e).

Pursuant to N.C.G.S. § 163A-159(c), when an actual or potential conflict of interest is cited by the Board under N.C.G.S. § 163A-189(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act.

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 163A-158. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Lisa Johnson, SEI Unit  
NC Board of Elections & Ethics Enforcement

cc: Dr. Paul R. Cunningham  
Mr. Silas Payne, Ethics Liaison

Attachment: Ethics Education Flyer

NC Medical Care Commission  
 Quarterly Report on **Outstanding Debt** (End: 4th Quarter FYE 2018)

	FYE 2017	FYE 2018
<b>Program Measures</b>		
Outstanding Debt	Ending: 6/30/2017 <b>\$6,610,632,081</b>	Ending: 6/30/2018 <b>\$6,155,239,318</b>
Outstanding Series	<b>146</b>	<b>138<sup>1</sup></b>
<b>Detail of Program Measures</b>		
Outstanding Debt per Hospitals and Healthcare Systems	Ending: 6/30/2017 \$5,478,149,949	Ending: 6/30/2018 \$4,999,247,662
Outstanding Debt per CCRCs	\$1,095,939,132	\$1,093,276,656
Outstanding Debt per Other Healthcare Service Providers	\$36,543,000	\$62,715,000
<b>Outstanding Debt Total</b>	<b>\$6,610,632,081</b>	<b>\$6,155,239,318</b>
Outstanding Series per Hospitals and Healthcare Systems	89	84
Outstanding Series per CCRCs	50	51
Outstanding Series per Other Healthcare Service Providers	7	3
<b>Series Total</b>	<b>146</b>	<b>138</b>
Number of Hospitals and Healthcare Systems with Outstanding Debt	20	20
Number of CCRCs with Outstanding Debt	20	20
Number of Other Healthcare Service Providers with Outstanding Debt	5	2
<b>Facility Total</b>	<b>45</b>	<b>42</b>

**Note 1:** For FYE 2018, NC MCC has closed **37 Bond Series** thru the 4th Quarter. Out of the 37 closed Bond Series: 6 Bond Series represent new money projects, 1 Bond Series represents a lease, 2 Bond Series represent a mix of new money projects and refundings, 11 Bond Series represent refundings, and 17 bond series represent conversions. The net loss of 8 for Bond Series outstanding from FYE 2017 to current represents all new money projects, refundings, conversions, and redemptions.

**GENERAL NOTES:** Facility Totals represent a parent entity total and do not represent each individual facility owned by the parent entity. CCRCs are licensed by the NC Department of Insurance. "Other Healthcare Service Providers" would include nursing homes, rehabilitation facilities, assisted living, blood donation centers, independent living, and hospice facilities. The following parent entities represent the "other healthcare service providers" with outstanding NC MCC debt: DePaul; Lower Cape Fear Hospice

**Exhibit B (Outstanding Balance)**

NC Medical Care Commission  
 Quarterly Report on **History** of NC MCC Finance Act Program (End: 4th Quarter FYE 2018)

	FYE 2017	FYE 2018
<b>Program Measures</b>	Ending: 6/30/2017	Ending: 6/30/2018
Total PAR Amount of Debt Issued	<b>\$23,598,030,240</b>	<b>\$24,997,228,002</b>
Total Project Debt Issued (excludes refunding/conversion proceeds) <sup>1</sup>	<b>\$11,793,689,652</b>	<b>\$11,957,261,243</b>
Total Series Issued	<b>578</b>	<b>615</b>

	Ending: 6/30/2017	Ending: 6/30/2018
<b>Detail of Program Measures</b>		
PAR Amount of Debt per Hospitals and Healthcare Systems	\$19,322,476,253	\$20,346,421,032
PAR Amount of Debt per CCRCs	\$3,922,728,757	\$4,276,511,740
PAR Amount of Debt per Other Healthcare Service Providers	\$352,825,230	\$374,295,230
<b>Par Amount Total</b>	<b>\$23,598,030,240</b>	<b>\$24,997,228,002</b>

Project Debt per Hospitals and Healthcare Systems	\$9,373,709,822	\$9,405,882,588
Project Debt per CCRCs	\$2,172,965,915	\$2,304,364,740
Project Debt per Other Healthcare Service Providers	\$247,013,915	\$247,013,915
<b>Project Debt Total</b>	<b>\$11,793,689,652</b>	<b>\$11,957,261,243</b>

Series per Hospitals and Healthcare Systems	368	388
Series per CCRCs	172	188
Series per Other Healthcare Service Providers	38	39
<b>Series Total</b>	<b>578</b>	<b>615</b>

Number of Hospitals and Healthcare Systems issuing debt	99	99
Number of CCRCs issuing debt	40	40
Number of Other Healthcare Service Providers issuing debt	46	46
<b>Facility Total</b>	<b>185</b>	<b>185</b>

**Note 1:** Project Debt excludes bond proceeds that directly refunded prior NCMCC outstanding issues and conversion par amounts. Project Debt is an accumulation of all new project money, issuance costs (including issuance costs for refundings/conversions), and refundings of non-NCMCC debt.

**GENERAL NOTES:** Facility Totals represent each individual facility and do not represent parent entity totals. CCRCs are licensed by the NC Department of Insurance. "Other Healthcare Service Providers" would include nursing homes, rehabilitation facilities, assisted living, blood donation centers, non-CCRC independent living, and hospice facilities.

**Exhibit B (History)**

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
809 Ruggles Drive  
Raleigh, North Carolina**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE**

**JUNE 6, 2018**

**11:00 A.M.**

**Members of the Executive Committee Present:**

John A. Fagg, M.D., Chairman  
Joseph D. Crocker, Vice-Chairman  
Charles H. Hauser  
Eileen C. Kugler, RN, MSN, MPH, FNP  
Albert F. Lockamy, RPh  
Devdutta G. Sangvai, M.D.

**Members of the Executive Committee Absent:**

Robert E. Schaaf, M.D.

**Members of Staff Present:**

Geary W. Knapp, JD, CPA, Assistant Secretary  
Crystal Watson-Abbott, Auditor  
Kathy C. Larrison, Auditor  
Alice S. Creech, Executive Assistant

**Others Present:**

Kevin Dougherty, McGuire Woods, LLP  
David O'Connor, CaroMont Health  
Ken Reeb, Carol Woods  
Pat Sprigg, Carol Woods  
Lyman Wray, Stephens, Inc.

**1. Purpose of Meeting**

To consider an Amendment to the Series 2003 CaroMont Health Trust Agreement and approve the final sale of bonds for The Carol Woods Retirement Community.

**2. Resolution of the North Carolina Medical Care Commission approving and authorizing execution and delivery of a First Amendment to Second Amended and Restated Trust Agreement dated as of July 3, 2017, between the North Carolina Medical Care Commission and The Bank of New York Mellon Trust Company, N.A., as Bond Trustee for the issuance of \$120,000,000 North Carolina Medical Care Commission Hospital Revenue Bonds (CaroMont Health), Series 2003.**

Remarks were made by Dr. Fagg, Mr. Crocker, and Mr. O'Connor.

**Executive Committee Action:** Motion was made to approve the resolution with the addition of descriptive language identifying CaroMont Health in the amendment by Dr. Fagg, seconded by Mr. Lockamy, and unanimously approved.

**FIRST AMENDMENT TO  
SECOND AMENDED AND RESTATED TRUST AGREEMENT**

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED TRUST AGREEMENT, dated as of June 1, 2018 (the "First Amendment"), between the NORTH CAROLINA MEDICAL CARE COMMISSION, a commission of the Department of Health and Human Services of the State of North Carolina (the "Commission"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized under and by virtue of the laws of the United States of America, and having its designated corporate trust office in Jacksonville, Florida, which is authorized to exercise trust powers and is subject to examination by federal authority and being duly qualified to accept and administer the trusts created hereby (together with any successor trustee under this Trust Agreement, the "Bond Trustee");

**W I T N E S S E T H:**

WHEREAS, the Commission is a commission of the Department of Health and Human Services of the State of North Carolina, and is authorized under Chapter 131A, General Statutes of North Carolina, as amended (the "Act"), to borrow money and to lend the same to any public or non-profit agency for the purpose of providing funds to finance or refinance all or any part of the cost of health care facilities; and

WHEREAS, pursuant to the Act, the Commission and the Bond Trustee have heretofore entered into a Second Amended and Restated Trust Agreement, dated as of July 3, 2017 (the "Trust Agreement"), for the purpose of authorizing the issuance of Bonds and securing the payment thereof, all as provided in the Trust Agreement; and

WHEREAS, pursuant to Section 1102 of the Trust Agreement, the Holders of not less than a majority of the aggregate principal amount of Bonds then Outstanding shall, with the prior written consent of the Reinsurer, have the right, from time to time, anything contained in the Trust Agreement to the contrary notwithstanding, to consent to and approve the execution by the Commission and the Bond Trustee of such trust agreement or trust agreements supplemental hereto as shall be deemed necessary or desirable by the Commission for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Trust Agreement (subject to certain exception specified therein); and

WHEREAS, the Commission desires to amend the Trust Agreement pursuant to Section 1102 of the Trust Agreement in order to modify certain provisions of the Trust Agreement as set forth below; and

WHEREAS, Wells Fargo Bank, National Association is the current Holder of all of the Bonds currently Outstanding; and

WHEREAS, as indicated by their respective signatures below, Wells Fargo Bank, National Association, as Holder of all of the Bonds currently Outstanding, and National Public Finance Guarantee Corporation, as Reinsurer, have approved and consented to the terms and provisions of this First Amendment;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and the Bond Trustee hereby agree as follows:

SECTION 1. The definition of “Applicable Spread” in Section 1.01 of the Trust Agreement is hereby amended to read as follows:

“Applicable Spread” means, respect to each Index Interest Rate Period, the following:

(a) During the Direct Purchase Period beginning on July 3, 2017, 40 basis points (0.40%), which Applicable Spread is subject to the maintenance of the current long-term unenhanced ratings assigned by Moody’s and S&P to indebtedness of the Obligated Group evidenced or secured by an Obligation issued under the Master Indenture on a parity with the Bonds or, if no such indebtedness of the Obligated Group is publicly held, the long-term unenhanced rating of the general credit of the Parent and its affiliates, in either case, of A1 and AA-, respectively. In the event of an increase or decrease in the long-term unenhanced credit rating assigned by Moody’s or S&P to indebtedness of the Obligated Group evidenced or secured by an Obligation issued under the Master Indenture on a parity with the Bonds or, if no such indebtedness of the Obligated Group is publicly held, the long-term unenhanced rating of the general credit of the Parent and its affiliates, in either case, the Applicable Spread shall be the number of basis points associated with such new rating as set forth in the following schedule:



Credit Rating Applicable Spread

<u>Moody's</u>	<u>S&amp;P</u>	<u>Applicable Spread</u>
Aa2 or above	AA or above	0.37%
Aa3, A1 or A2	AA-, A+ or A	0.40%
A3	A-	0.45%
Baa1	BBB+	0.50%
Baa2	BBB	0.55%
Baa3	BBB-	0.60%

In the event that there is a split among such ratings, the lower rating shall apply for purposes of determining the Applicable Spread. References in this definition are to rating categories as presently determined by such Rating Agencies, and in the event of the adoption of any new or changed rating system or a "global" rating scale by any such Rating Agency, the rating categories shall be adjusted accordingly to a new rating which most closely approximates the requirements as set forth herein. Any change in the Applicable Spread shall begin to apply on the first LIBOR Index Reset Date or SIFMA Index Reset Date, as applicable, immediately following any such change in the credit ratings.

(b) During any Index Interest Rate Period other than the Direct Purchase Period beginning on July 3, 2017, the number of basis points determined by the Market Agent on or before the first day of such Index Interest Rate Period and designated by the Corporations and the Parent in accordance with Section 2.10(a) or (b).

SECTION 2. This First Amendment is executed and delivered with the intent that the laws of the State of North Carolina shall govern its construction.

SECTION 3. Except as amended and supplemented by this First Amendment, the terms and provisions of the Trust Agreement are hereby ratified and confirmed.

SECTION 4. This First Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

SECTION 5. This First Amendment shall inure to the benefit of and shall be binding upon the Commission and the Bond Trustee and their respective successors and assigns.

SECTION 6. All capitalized terms used herein but not otherwise defined shall have the meaning given such terms in the Trust Agreement.

IN WITNESS WHEREOF, the Commission and the Bond Trustee have caused this First Amendment to be executed in their respective names by their respective duly authorized officers all as of the date first written above.

NORTH CAROLINA MEDICAL CARE COMMISSION

[SEAL]

By: \_\_\_\_\_

Vice Chairman

Attest:

\_\_\_\_\_  
Assistant Secretary

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Bond Trustee

By: \_\_\_\_\_

Vice President

[First Amendment to Second Amended and Restated Trust Agreement, dated as of June 1, 2018,  
between the North Carolina Medical Care Commission and The Bank of New York Mellon Trust  
Company, N.A., as Bond Trustee]

APPROVED AND CONSENTED TO BY:

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Holder

By: \_\_\_\_\_

Name: J. Frank Chatman

Title: Senior Vice President

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION,  
as Reinsurer

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**3. Resolution authorizing the issuance of \$39,570,000 North Carolina Medical Care Commission Health Care Facilities First Mortgage Revenue Refunding Bonds (Carol Woods Project), Series 2018.**

Remarks were made by Mr. Dougherty, Dr. Fagg, Mr. Crocker, Ms. Sprigg, Mr. Reeb, and Mr. Wray.

**Executive Committee Action:** Motion was made to approve the resolution by Mrs. Kugler, seconded by Mr. Hauser and unanimously approved with the recusal of Dr. Fagg.

**WHEREAS**, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities; and

**WHEREAS**, The Chapel Hill Residential Retirement Center, Inc. (the “Corporation”) is a North Carolina nonprofit corporation and a “non-profit agency” within the meaning and intent of the Act, which owns and operates a continuing care retirement facility for the elderly in Chapel Hill, North Carolina; and

**WHEREAS**, the Commission has heretofore issued its Health Care Facilities First Mortgage Revenue Bonds (Carol Woods Project) Series 2010, in the original principal amount of \$30,000,000, of which \$22,470,000 in principal amount is currently outstanding (the “Series 2010 Bonds”), pursuant to that certain Trust Agreement, dated as of October 1, 2010, by and between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Prior Trustee”); and

**WHEREAS**, the Commission has heretofore issued its Health Care Facilities First Mortgage Revenue Bonds (Carol Woods Project) Series 2012, in the original principal amount of \$22,000,000, of which \$17,100,000 in principal amount is currently outstanding (the “Series 2012 Bonds” and, together with the Series 2010 Bonds, the “Prior Bonds”), pursuant to that certain Trust Agreement, dated as of July 1, 2012, by and between the Commission and the Prior Trustee; and

**WHEREAS**, the Corporation has made an application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (i) current refund all of the outstanding Prior Bonds and (ii) pay certain expenses incurred in connection with the issuance of the Bonds (as hereinafter defined); and

**WHEREAS**, the Commission has determined that the public will best be served by the proposed refinancing and, by a resolution adopted on May 10, 2018, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

**WHEREAS**, there have been presented to the officers and staff of the Commission draft copies of the following documents relating to the issuance of the Bonds:

(a) the Contract of Purchase, to be dated June 12, 2018 or such other date as shall be agreed upon by the parties thereto (the “Contract of Purchase”), by and between the Local Government Commission of North Carolina (the “Local Government Commission”) and BB&T Community Holdings Co. (the “Bank Holder”), and approved by the Commission and the Corporation;

(b) the Loan Agreement, to be dated as of June 1, 2018 or such other date as shall be agreed upon by the parties thereto (the “Loan Agreement”), by and between the Corporation and the Commission, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation;

(c) the Trust Agreement, to be dated as of June 1, 2018 or such other date as shall be agreed upon by the parties thereto (the “Trust Agreement”), by and between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”), securing the Bonds;

(d) the Continuing Covenants Agreement, to be dated as of June 1, 2018 or such date as shall be agreed upon by the parties thereto (the “Continuing Covenants Agreement”), by and between the Corporation and the Bank Holder;

(e) Supplemental Indenture for Obligation No. 8, to be dated as of June 1, 2018 or such other date as shall be agreed upon by the parties thereto (“Supplement No. 8”), by and between the Corporation and The Bank of New York Mellon Trust Company, N.A., as master trustee (the “Master Trustee”), supplementing the Amended and Restated Master Trust Indenture, dated as of October 1, 2010 (the “Master Indenture”), by and between the Corporation and the Master Trustee;

(f) Obligation No. 8, to be dated the date of its issuance (“Obligation No. 8”), to be issued by the Corporation to the Commission and assigned by the Commission to the Bond Trustee;

(g) Supplemental Indenture for Obligation No. 9, to be dated as of June 1, 2018 or such other date as shall be agreed upon by the parties thereto (“Supplement No. 9”), by and between the Corporation and the Master Trustee, supplementing the Master Indenture;

(h) Obligation No. 9, to be dated the date of its issuance (“Obligation No. 9”), to be issued by the Corporation to the Bank Holder; and

(i) the Fourth Amendment and Notice of Extension to Deed of Trust, to be dated as of June 1, 2018 or such other date as shall be agreed upon by the parties thereto (the “Deed of Trust Amendment”), among the Corporation, the Deed of Trust Trustee named therein and the Master Trustee; and

**WHEREAS**, the Commission has determined that, taking into account historical financial performance and financial forecasts internally generated by the Corporation, the

Corporation is financially responsible and capable of fulfilling its obligations under the Trust Agreement, the Loan Agreement, the Master Indenture, Supplement No. 8, Obligation No. 8, the Continuing Covenants Agreement, Supplement No. 9, Obligation No. 9 and the Deed of Trust Amendment; and

**WHEREAS**, the Commission has determined that the public interest will be served by the proposed refinancing and that, taking into account historical financial performance and financial forecasts internally generated by the Corporation, adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

**NOW, THEREFORE, THE EXECUTIVE COMMITTEE OF THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:**

**Section 1. Defined Terms.** Capitalized words and terms used in this Series Resolution and not defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Loan Agreement or the Trust Agreement.

**Section 2. Authorization of Bonds.** Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of its Health Care Facilities First Mortgage Revenue Refunding Bonds (Carol Woods Project), Series 2018 in the aggregate principal amount of \$39,570,000 (the “Bonds”), dated the date of the Closing, and having a final stated maturity date of April 1, 2033.

The Bonds shall be issued as fully registered bonds, initially in the denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000, and thereafter in denominations authorized by the provisions of the Trust Agreement. Commencing on the date of the Closing, the Bonds shall bear interest at the Bank-Bought Rate, calculated as provided in the Trust Agreement. The Bank-Bought Minimum Holding Period shall commence on the date of the Closing and shall end on April 1, 2033. The Bank-Bought Rate shall be the rate of interest per annum equal to the sum obtained by adding (i) the product of (x) 79% and (y) One-Month LIBOR plus (ii) 0.6478% per annum, adjusted monthly and otherwise in accordance with the Trust Agreement. The Bonds may be converted to bear interest by another Interest Rate Determination Method in accordance with the terms of the Trust Agreement. Interest on the Bonds shall be payable on each Interest Payment Date. Payments of principal of and interest on the Bonds shall be forwarded by the Bond Trustee to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

**Section 3. Redemption.** The Bonds shall be subject to extraordinary, optional and mandatory redemption at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement. The Sinking Fund Requirements for the Bonds are set forth in Schedule 1 attached to this Series Resolution.

**Section 4. Optional and Mandatory Tender for Purchase.** The Bonds shall be subject to optional and mandatory tender for purchase at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement.

**Section 5. Use of Bond Proceeds.** The Commission hereby finds that the use of the proceeds of the Bonds for the purposes described in the preamble to this Series Resolution

accomplishes the public purposes set forth in the Act. The proceeds of the Bonds shall be applied as set forth in Section 2.10 of the Trust Agreement.

**Section 6. Authorization of Loan Agreement and Trust Agreement.** The forms, terms and provisions of the Loan Agreement and the Trust Agreement are hereby approved in all respects, and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Loan Agreement and the Trust Agreement in substantially the forms presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, including but not limited to changes, modifications and deletions necessary to incorporate the final terms of the Bonds; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 7. Authorization of Contract of Purchase.** The form, terms and provisions of the Contract of Purchase are hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose is hereby authorized and directed to approve, by execution and delivery, the Contract of Purchase in substantially the form presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman or such member of the Commission, with the advice of counsel, may deem necessary and appropriate; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 8. Forms of Bonds.** The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the forms presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the Trust Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 9. Approval of Other Financing Documents.** The forms, terms and provisions of the Continuing Covenants Agreement, Supplement No. 8, Obligation No. 8, Supplement No. 9, Obligation No. 9 and the Deed of Trust Amendment are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Trust Agreement pursuant to Section 6 of this Series Resolution shall be conclusive evidence of the approval by the Commission of the agreements and instruments set forth in this Section 9.

**Section 10. Purchase of Bonds.** The Commission hereby approves the action of the Local Government Commission in awarding the Bonds to the Bank Holder at a purchase price of \$39,570,000 (representing the principal amount of the Bonds).

Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds upon the due and valid execution of the Trust Agreement, the Loan Agreement, the Continuing Covenants Agreement, Supplement No. 8, Obligation No. 8, Supplement No. 9, Obligation No. 9, the Deed of Trust Amendment and the Contract of Purchase by the parties thereto and thereafter the Bond Trustee shall deliver the Bonds to the Bank Holder against payment therefor in accordance with and subject to the provisions of the Contract of Purchase.

**Section 11. Commission Representatives.** S. Mark Payne, Secretary of the Commission, Geary W. Knapp, Assistant Secretary of the Commission, and Crystal Watson-Abbott, Auditor to the Commission, are each hereby appointed a Commission Representative, with full power to carry out the duties set forth in the Loan Agreement and the Trust Agreement.

**Section 12. Ancillary Actions.** The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission for such purpose, the Secretary and the Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Trust Agreement, the Loan Agreement, the Master Indenture, Supplement No. 8, Obligation No. 8, Supplement No. 9, Obligation No. 9, the Deed of Trust Amendment, the Continuing Covenants Agreement and the Contract of Purchase.

**Section 13. Bond Trustee.** The Bank of New York Mellon Trust Company, N.A. is hereby appointed Bond Trustee for the Bonds.

**Section 14. Professional Fees.** A comparison of the professional fees as set forth in the resolution adopted by the Commission granting preliminary approval of this financing with the actual professional fees incurred in connection with this financing is attached to this Series Resolution as Schedule 2.

**Section 15. Effective Date.** This Series Resolution shall take effect immediately upon its passage.

**Schedule 1**

Sinking Fund Requirements

<u>Year</u> <u>(April 1)</u>	<u>Amount</u>
2019	\$ 1,950,000
2020	2,050,000
2021	2,150,000
2022	2,250,000
2023	2,350,000
2024	2,450,000
2025	2,550,000
2026	2,650,000
2027	2,750,000
2028	2,850,000
2029	2,950,000
2030	3,050,000
2031	3,150,000
2032	3,250,000
2033*	3,170,000

\* Maturity

**Schedule 2**  
**Professional Fees**

<u>Professional</u>	<u>Preliminary Approval</u>	<u>Actual</u>
Bank Commitment Fee	\$15,000	\$15,000
Accountant Fee	10,000	-0-
Corporation Counsel	20,000	25,000
Bond Counsel	75,000	70,000
Bank Counsel	25,000	35,000
Trustee Fee	2,500	2,500
Financial Advisor	45,000	47,259
Swap Advisor	30,000	30,430

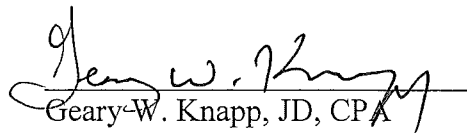


<b>NC MCC Bond Sale Approval Form</b>					
<b>Facility Name: Carol Woods</b>					
	<b>Time of Preliminary Approval</b>	<b>Time of Final Approval</b>	<b>Total Variance</b>	<b>Explanantion of Variance</b>	
<b>SERIES: Bank Held Bonds 2018</b>					
PAR Amount	\$39,570,000.00	\$39,570,000.00	\$0.00		
Estimated Interest Rate	3.13%	3.098%	-0.032%	Lower Interest Rate Environment	
All-in True Interest Cost	3.24%	3.22%	-0.019%	Lower Interest Rate Environment	
Maturity Schedule (Interest) - Date	Monthly	Monthly	-		
Maturity Schedule (Principal) - Date	Annual 4/1/2019	Annual 4/1/2019	-		
Bank Holding Period (if applicable) - Date	15 years 4/1/2033	15 years 4/1/2033	-		
Estimated NPV Savings (\$) (if refunded bonds)	\$461,826	\$675,937	\$214,111.00	Lower Interest Rate Environment	
Estimated NPV Savings (%) (if refunded bonds)	1.17%	1.71%	0.541%	Lower Interest Rate Environment	
<b>NOTES:</b>					
NPV Savings includes swap termination payment of \$3,741,108. Cash flow savings over the 15 years is \$4,349,420.99					

4. Adjournment

There being no further business, the meeting was adjourned at 11:24 a.m.

Respectfully submitted,

  
Geary W. Knapp, JD, CPA  
Assistant Secretary

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
809 Ruggles Drive  
Raleigh, North Carolina 27603**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING FROM THE  
COMMISSION'S OFFICE**

**JULY 16, 2018**

**11:00 A.M.**

**Members of the Executive Committee Present:**

Dr. John A. Fagg, Chairman  
Joseph A. Crocker, Vice-Chairman  
Charles H. Hauser  
Eileen C. Kugler  
Albert F. Lockamy  
Dr. Devdutta G. Sangvai

**Members of the Executive Committee Absent:**

Dr. Robert E. Schaaf

**Members of Staff Present:**

S. Mark Payne, MCC Secretary, DHSR Director  
Geary W. Knapp, JD, CPA, Assistant Secretary  
Crystal Watson-Abbott, Auditor  
Kathy C. Larrison, Auditor  
Alice S. Creech, Executive Assistant

**Others Present:**

Kevin Dougherty, McGuire Woods, LLP  
Jim Whalen, Community Facilities (DePaul)  
Jeff Poley, Parker Poe Adams & Bernstein, LLP  
Julia Hanover, Presbyterian Homes, Inc.  
Tim Webster, Presbyterian Homes, Inc.  
Allen Robertson, Robinson Bradshaw & Hinson, P.A.  
Don Trippel, Hugh Chatham Memorial Hospital

1. **Purpose of Meeting**

To authorize final approval of Trust Agreement amendments for Presbyterian Homes, Hugh Chatham Memorial Hospital, and Community Facilities (DePaul).

2. **Resolution of the North Carolina Medical Care Commission Authorizing Three First Amendments to Trust Agreement relating to Bonds for The Presbyterian Homes, Inc. and Glenaire, Inc.**

*Remarks were made by Mr. Joe Crocker, Mr. Jeff Poley and Mr. Tim Webster.*

**EXECUTIVE COMMITTEE ACTION:** Motion was made to approve the resolution by Mrs. Kugler, seconded by Dr. Sangvai, and unanimously approved.

*WHEREAS*, the North Carolina Medical Care Commission (the “*Commission*”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “*Act*”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities; and

*WHEREAS*, The Presbyterian Homes, Inc. and Glenaire, Inc. (together, the “*Corporations*”) each are a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and a “non-profit agency” within the meaning of the Act; and

*WHEREAS*, the Corporations have requested the Commission to amend the trust agreements relating to the Commission’s Health Care Facilities First Mortgage Revenue Bonds (The Presbyterian Homes Obligated Group), Series 2015, Health Care Facilities First Mortgage Revenue Bonds (The Presbyterian Homes Obligated Group), Series 2016A and Health Care Facilities First Mortgage Revenue Bonds (The Presbyterian Homes Obligated Group), Series 2016B to permit the interest rate on the above-referenced bonds to fluctuate up and down in the event of a change in the corporate tax rate (currently, the interest rate can only be increased if corporate tax rates fall); and

*WHEREAS*, there has been presented to the staff of the Commission draft copies of three First Amendments to Trust Agreement, each dated as of July 1, 2018 (collectively, the “*First Amendments*”), each between the Commission and U.S. Bank National Association, as bond trustee, which First Amendments effectuate the change as set forth above for each respective series of bonds.

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. The forms, terms and provisions of the First Amendments are hereby approved in all respects, and the Chairman or Vice Chairman and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the First Amendments in substantially the forms presented at this meeting, together with such changes,

modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 2. This resolution shall take effect immediately upon its passage.

## EXHIBIT A

### Amendments to the Original Agreements

The last paragraph of Section 2.03 of the Original Agreement is modified so as to read as follows:

If at any time after the Closing there should be any change in the maximum marginal rate of federal income tax applicable to the taxable income of the Majority Bank Holder, its successors or assigns ("*BB&T Tax Rate*"), then the Adjusted LIBOR Rate in effect hereunder from time to time as herein provided, for so long as there shall not have occurred a Determination of Taxability, shall be adjusted by the Majority Bank Holder (upward or downward as the case may be), effective as of the effective date of any such change in the BB&T Tax Rate, by multiplying the interest rate in effect at such time by a fraction, the denominator of which is one hundred percent (100%) minus the BB&T Tax Rate in effect at Closing, and the numerator of which is one hundred percent (100%) minus the BB&T Tax Rate after giving effect to such change. The Majority Bank Holder shall notify the Bond Trustee in writing of any change in interest rate. The Bond Trustee shall be entitled to conclusively rely on such written notice with regard to the new interest rate.

3. Resolution of the North Carolina Medical Care Commission Approving and Authorizing Execution and Delivery of a First Supplemental Trust Agreement Relating to the North Carolina Medical Care Commission Variable Rate Demand Health Care Facilities Revenue Bonds (Hugh Chatham Memorial Hospital Project), Series 2008 (the "Bonds").

*Remarks were made by Mr. Joe Crocker and Mr. Allen Robertson.*

**EXECUTIVE COMMITTEE ACTION:** Motion was made to approve the resolution by Dr. John Fagg, seconded by Mr. Al Lockamy, and unanimously approved.

WHEREAS, the North Carolina Medical Care Commission (the "Commission"), a commission of the Department of Health and Human Services of the State of North Carolina, has issued \$45,455,000 aggregate principal amount of its Variable Rate Demand Health Care Facilities Revenue Bonds (Hugh Chatham Memorial Hospital Project), Series 2008 (the "Bonds"), of which \$39,975,000 aggregate principal amount is outstanding; and

WHEREAS, the Bonds have been issued and are outstanding under the terms of an Amended and Restated Trust Agreement dated as of July 25, 2013 (the "Trust Agreement"), between the Commission and U.S. Bank National Association, as bond trustee (the "Bond Trustee"), and the Commission has loaned the proceeds from the sale of the Bonds to Hugh Chatham Memorial Hospital, Inc. d/b/a Hugh Chatham Memorial Hospital (the "Corporation") pursuant to an Amended and Restated Loan Agreement, dated as of July 25, 2013 (the "Loan Agreement"), between the Commission and the Corporation; and

WHEREAS, the Bonds were purchased on July 25, 2013, and continue to be held, by Wells Fargo Municipal Capital Strategies, LLC (the "Purchaser"); and

WHEREAS, the Corporation intends to deliver a Conversion Direction to elect that the Bonds bear interest at a new Index Interest Rate beginning on or after July 25, 2018 (the "Conversion Date"); and

WHEREAS, on the Conversion Date, the Bonds will be purchased by the Purchaser; and

WHEREAS, the Corporation and the Purchaser have agreed to modify and supplement certain definitions in Section 1.01 of the Trust Agreement simultaneously with the conversion to the new Index Interest Rate Period on the Conversion Date; and

WHEREAS, Sections 11.02 and 11.08 of the Trust Agreement permits the Commission and the Bond Trustee, with the consent of the Purchaser as the Holder (as defined in the Trust Agreement) of 100% of the Bonds, to enter into agreements supplemental to the Trust Agreement to make any change to the Trust Agreement;

WHEREAS, there has been presented to the staff of the Commission a draft copy of a First Supplemental Trust Agreement, to be dated the date of delivery thereof (the "Supplement") between the Commission and the Bond Trustee, that would amend the Trust Agreement to make the changes agreed upon by the Corporation and the Purchaser; and

WHEREAS, the Corporation has requested that the Commission approve the Supplement and authorize its execution and delivery;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. The form, terms and provisions of the Supplement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to execute and deliver the Supplement in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of bond counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 2. The Chairman, Vice Chairman, Secretary or Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) or any duly

authorized Commission Representative under the Trust Agreement are authorized and directed to take such other action and to execute and deliver any such other documents, certificates, undertakings, agreements or other instruments as they, with the advice of bond counsel, may deem necessary or appropriate to effect the changes made in the Supplement.

Section 3. This Resolution shall take effect immediately upon its passage.

## EXHIBIT A

### Amendment to Trust Agreement Requiring Holder Consent.

(a) The definition of "LIBOR Index" in Section 1.01 of the Trust Agreement is hereby deleted in its entirety and the following is substituted therefor:

"LIBOR Index" means, for any date of determination, the per annum rate of interest determined on the basis of the rate on deposits in United States dollars of amounts equal to or comparable to the Principal Amount, offered for a term of one month, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or any successor page), determined as of approximately 11:00 a.m., London time, on each Computation Date for effect on the immediately succeeding LIBOR Index Reset Date, or if such rate is not available, another comparable rate determined by the Calculation Agent of which the Commission and the Corporation has received written notice. Notwithstanding anything herein to the contrary, during any period of time while the LIBOR Index, determined as provided above, would be less than zero percent (0.0%), the LIBOR Index shall be deemed to be zero percent (0.0%).

(b) The definition of "Margin Rate Factor" in Section 1.01 of the Trust Agreement is hereby deleted in its entirety and the following is substituted therefor:

"Margin Rate Factor" means the greater of (i) 1.0, and (ii) the product of (a) one minus the prevailing Maximum Federal Corporate Tax Rate multiplied by (b) the quotient of (A) one divided by (B) (1) one minus (2) the Maximum Federal Corporate Tax Rate on the Margin Rate Factor Pricing Date. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change. As of July 25, 2018, the Margin Rate Factor equals 1.0.

(c) Section 1.01 of the Trust Agreement is hereby amended by inserting the following new definition of "Margin Rate Factor Pricing Date" in appropriate alphabetical order:

"Margin Rate Factor Pricing Date" means July 25, 2018 or, if later, the most recent Conversion Date on which the Applicable Factor or the Applicable Spread has been modified.

(d) The definition of "Taxable Rate" in Section 1.01 of the Trust Agreement is hereby deleted in its entirety and the following is substituted therefor:

"Taxable Rate" means, for any date of determination, the rate of interest per annum equal to the product of the interest rate on the Bonds then in effect multiplied by the quotient of (a) one divided by (b) one minus the then current Maximum Federal Corporate Tax Rate in effect on the date of calculation.

4. **RESOLUTION AUTHORIZING AN AMENDMENT OF THE TRUST AGREEMENT SECURING THE OUTSTANDING NORTH CAROLINA MEDICAL CARE COMMISSION HEALTH CARE FACILITIES FIRST MORTGAGE REVENUE BONDS (COMMUNITY FACILITIES PROJECT), SERIES 2007A.**

*Remarks were made by Mr. Joe Crocker, and Mr. Kevin Dougherty.*

**EXECUTIVE COMMITTEE ACTION:** Motion was made to approve the resolution by Mrs. Eileen Kugler, seconded by Dr. John Fagg, and unanimously approved.

WHEREAS, Community Facilities, Inc. (the "Corporation") is a private, not-for-profit corporation duly incorporated and validly existing under and by virtue of the laws of the State of New York and a "nonprofit agency" within the meaning and intent of Chapter 131A of the General Statutes of North Carolina, as amended; and

WHEREAS, on October 25, 2007, the Commission issued its Health Care Facilities First Mortgage Revenue Bonds (Community Facilities Project), Series 2007A (the "Series 2007A Bonds"), pursuant to a Trust Agreement, dated as of October 1, 2007 (the "Original Trust Agreement"), between the Commission and the Bond Trustee; and

WHEREAS, the Commission loaned the proceeds of the Series 2007A Bonds to the Corporation pursuant to a Loan Agreement, dated as of October 1, 2007, between the Commission and the Corporation; and

WHEREAS, on September 17, 2009, the Commission and the Bond Trustee entered into an Amended and Restated Trust Agreement, dated as of September 1, 2009 (the "Amended and Restated Trust Agreement"), for the purpose of amending and restating the Original Trust Agreement in its entirety in order to provide for the conversion of the Series 2007A Bonds, in the aggregate principal amount of \$30,000,000, to bear interest at the Bank Purchase Interest Rate (as defined in the Amended and Restated Trust Agreement), and Citizens Bank, N.A. (the "Bank") purchased the Series 2007A Bonds on the date of such conversion; and

WHEREAS, Section 208(a)(ii) of the Amended and Restated Trust Agreement provides for an adjustment to the Bank Purchase Interest Rate upon a change in the maximum marginal statutory rate of federal tax imposed on the income of corporations generally (the "Corporate Marginal Tax Rate"); and



WHEREAS, the Corporate Marginal Tax Rate decreased under the "Tax Cuts and Jobs Act of 2017" effective January 1, 2018; and

WHEREAS, after the effective date of such change in the Corporate Marginal Tax Rate, the Bank discovered a technical defect in the formula set forth in Section 208(a)(ii) of the Amended and Restated Trust Agreement and the Series 2007A Bonds, the unintended consequence of which would be to make the tax-exempt interest rate on the Series 2007A Bonds equivalent to a taxable rate; and

WHEREAS, Section 1101(g) of the Amended and Restated Trust Agreement provides that the Amended and Restated Trust Agreement may be amended to cure any ambiguity or to correct or supplement any provision contained in the Amended and Restated Trust Agreement that may be defective or inconsistent with any provision contained in the Amended and Restated Trust Agreement; and

WHEREAS, the Corporation and the Bank, as the owner of the Series 2007A Bonds, now desire to correct the defect in Section 208(a)(ii) of the Amended and Restated Trust Agreement and the Series 2007A Bonds; and

WHEREAS, there has been presented to the officers and staff of the Commission a draft of the Supplemental Trust Agreement Amending the Amended and Restated Trust Agreement, to be dated as of July 1, 2018 (the "Supplemental Trust Agreement"), between the Commission and the Bond Trustee, and a draft of an Allonge to the Series 2007A Bonds (the "Allonge"), correcting the defect in the formula contained in Section 208(a)(ii) of the Amended and Restated Trust Agreement and the Series 2007A Bonds; and

WHEREAS, the Commission has determined that the public will best be served by the amendment of the Amended and Restated Trust Agreement and the Series 2007A Bonds;

NOW, THEREFORE, THE EXECUTIVE COMMITTEE OF THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

The forms, terms and provisions of the Supplemental Trust Agreement and the Allonge are hereby approved in all respects, and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Supplemental Trust Agreement and the Allonge in substantially the forms presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission for such purpose, the Secretary and the Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments, including delivery of the Allonge to the Bank, as they, with the advice of counsel, may deem necessary or appropriate to effect the amendment of the Amended and Restated Trust Agreement and the Series 2007A Bonds.

This Resolution shall take effect immediately upon its passage.

EXHIBIT A

Amendment

The formula set forth in Section 208(a)(ii) of the Amended and Restated Trust Agreement and in the form of the Series 2007A Bonds set forth as Exhibit A to the Amended and Restated Trust Agreement is hereby amended and restated to read as follows:

$$\frac{[\text{Original Tax-Effective Factor}]}{[1 - \text{Original Tax Rate}]} \times [1 - \text{New Tax Rate}]$$

EXHIBIT B

Explanation of Amendment

**From:** James Whalen [<mailto:JWhalen@depaul.org>]  
**Sent:** Friday, June 29, 2018 10:21 AM  
**To:** Dougherty, J. Kevin <[kdougherty@mcguirewoods.com](mailto:kdougherty@mcguirewoods.com)>; Cahill, M. Cornelia <[MCahill@barclaydamon.com](mailto:MCahill@barclaydamon.com)>; Taffe, Paul V <[Paul.Taffe@citizensbank.com](mailto:Paul.Taffe@citizensbank.com)>  
**Subject:** RE: NCMCC-DePaul Correction to Marginal Tax Rate Formula for Series 2007A Bonds

Hi – My understanding of the amended rate from my initial discussions with Citizens is as follows:

**The language per the documents follows:**

Original Tax Effective Factor / Original Tax Rate X (1 – New Tax Rate) = New Tax Effective Factor

68% / 35%                      X              (1-21%)                      =              New Tax Effective Factor

When this equation is solved, the New Tax Effective Factor is determined to be 153.5%, which is obviously incorrect.

The **correct language** should have included a (1-Original Tax Rate) as the denominator, shown below.

Original Tax Effective Factor / (1 - Original Tax Rate) X (1 – New Tax Rate) = New Tax Eff. Factor

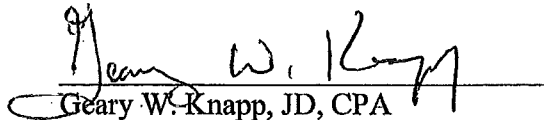
68% / (1 - 35%)                      X              (1-21%)                      =              New Tax Effective Factor

Solved equation = 82.6%

5. **Adjournment**

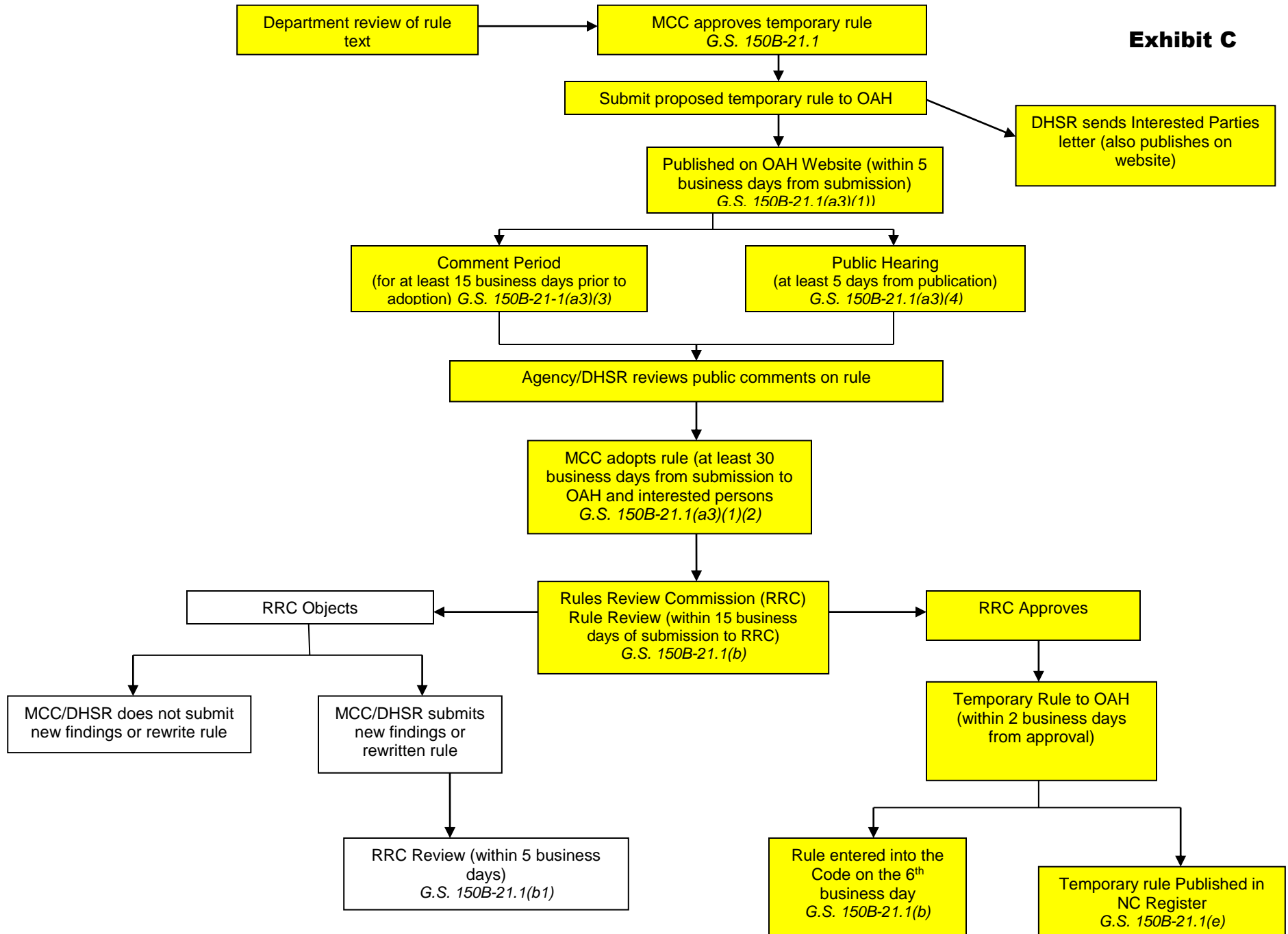
There being no further business, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

  
Geary W. Knapp, JD, CPA  
Assistant Secretary

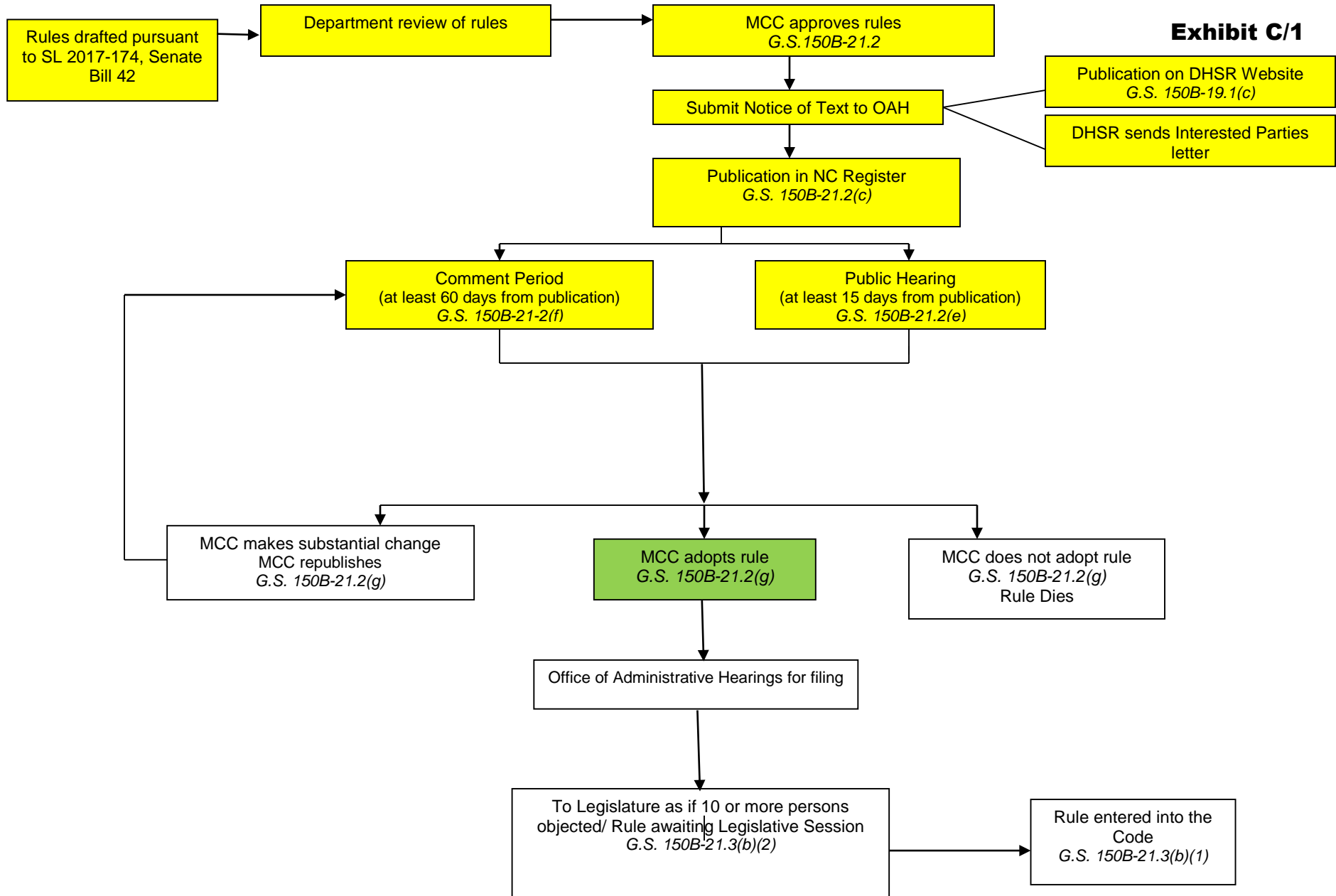
# Temporary Rulemaking Process for Hospital Construction FGI Rules - 10A NCAC 13B .6003, .6105, & .6228

**Exhibit C**



**Permanent Rulemaking Process for : Hospital Construction FGI Rules - 10A NCAC 13B .6003, .6105, .6228**

**Exhibit C/1**



1 10A NCAC 13B .6003 is adopted as published in 32:18 NCR 1741-1742 as follows:

2

3 **10A NCAC 13B .6003 DEFINITIONS**

4 In addition to the definitions set forth in G.S. 131E-76, the following definitions shall apply in Sections .6000 through  
5 .6200 of this Subchapter:

6 (1) “Addition” means an extension or increase in floor area or height of a building.

7 (2) “Alteration” means any construction or renovation to an existing building other than construction  
8 of an addition.

9 (3) “Construction documents” means final building plans and specifications for the construction of a  
10 facility that a governing body submits to the Construction Section for approval as specified in Rule  
11 .3102 of this Subchapter.

12 (4) “Construction Section” means the Construction Section of the Division of Health Service  
13 Regulation.

14 (5) “Division” means the Division of Health Service Regulation of the North Carolina Department of  
15 Health and Human Services.

16 (6) “Facility” means a hospital as defined in G.S. 131E-76.

17

18 *History Note: Authority G.S. 131E-76; 131E-79; S.L. 2017-174;*

19 *Temporary Adoption Eff. December 1, 2017. 2017;*

20 *Eff. Pending Legislative Review.*

**MCC Action: Final Adoption**

1 10A NCAC 13B .6105 is adopted as published in 32:18 NCR 1741-1742 as follows:

2

3 **10A NCAC 13B .6105 INCORPORATION BY REFERENCE AND APPLICATION OF THE**  
4 **REQUIREMENTS OF THE FGI GUIDELINES**

5 (a) For the purposes of Sections .6000 through .6200 of this Subchapter, the Guidelines for the Design and  
6 Construction of Hospitals and Outpatient Facilities shall be referred to as the FGI Guidelines.

7 (b) The FGI Guidelines are incorporated herein by reference, including all subsequent amendments and editions;  
8 however, the following chapters of the FGI Guidelines shall not be incorporated herein by reference:

9 (1) Chapter 3.1;

10 (2) Chapter 3.2;

11 (3) Chapter 3.3;

12 (4) Chapter 3.4;

13 (5) Chapter 3.5;

14 (6) Chapter 3.6;

15 (7) Chapter 3.7;

16 (8) Chapter 3.8;

17 (9) Chapter 3.9;

18 (10) Chapter 3.10;

19 (11) Chapter 3.11;

20 (12) Chapter 3.12; and

21 (13) Chapter 3.14.

22 (c) The FGI Guidelines incorporated by this Rule may be purchased from the Facility Guidelines Institute online at  
23 <https://www.fgiguideines.org/guidelines-main/purchase/> at a cost of two hundred dollars (\$200.00) or accessed  
24 electronically free of charge at <https://www.fgiguideines.org/guidelines-main/>.

25 (d) A new facility or any additions or alterations to an existing facility whose construction documents were approved  
26 by the Construction Section on or after January 1, 2018 shall meet the requirements set forth in:

27 (1) Sections .6000 through .6200 of this Subchapter; and

28 (2) the edition of the FGI Guidelines that was in effect at the time the construction documents were  
29 approved by the Construction Section.

30 (e) An existing facility whose construction documents were approved by the Construction Section prior to January 1,  
31 2018 shall meet those standards established in Sections .6000 through .6200 of this Subchapter that were in effect at  
32 the time the construction documents were approved by the Construction Section.

33 (f) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (d)  
34 of this Rule.

35 (g) Previous versions of the Rules of Sections .6000 through .6200 of this Subchapter can be accessed online at  
36 <https://www.ncdhhs.gov/dhsr/const/index.html>.

37



- 1 *History Note: Authority G.S. 131E-79; S.L. 2017-174;*
- 2 *Temporary Adoption Eff. December 1, ~~2017~~ 2017;*
- 3 *Eff. Pending Legislative Review.*

**MCC Action: Final Adoption**

1 10A NCAC 13B .6228 is adopted as published in 32:18 NCR 1741-1742 as follows:

2

3 **10A NCAC 13B .6228 NEONATAL LEVEL I, II, III, AND IV NURSERIES**

4 A facility that provides neonatal services as specified in Rule .4305 of this Subchapter shall meet the requirements of  
5 the FGI Guidelines as follows:

6 (1) a Neonatal Level I nursery shall comply with the requirements of Sections 2.2-2.12 Nursery Unit  
7 and 2.2-2.12.3.1 Newborn Nursery;

8 (2) a Neonatal Level II nursery shall comply with the requirements of Sections 2.2-2.12 Nursery Unit  
9 and 2.2-2.12.3.3 Continuing Care Nursery;

10 (3) a Neonatal Level III nursery shall comply with the requirements of Section 2.2-2.10 Neonatal  
11 Intensive Care Unit; and

12 (4) a Neonatal Level IV nursery shall comply with the requirements of Section 2.2-2.10 Neonatal  
13 Intensive Care Unit.

14

15 *History Note: Authority G.S. 131E-79; S.L. 2017-174;*  
16 *Temporary Adoption Eff. December 1, ~~2017~~ 2017;*  
17 *Eff. Pending Legislative Review.*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**SESSION LAW 2017-174  
SENATE BILL 42**

AN ACT DIRECTING THE MEDICAL CARE COMMISSION TO ADOPT THE RECOMMENDATIONS OF THE AMERICAN SOCIETY OF HEALTHCARE ENGINEERING'S FACILITY GUIDELINES INSTITUTE.

The General Assembly of North Carolina enacts:

**SECTION 1.(a) Definitions.** – For purposes of this section and its implementation:

- (1) Commission or Medical Care Commission. – The Medical Care Commission created by Part 10 of Article 3 of Chapter 143B of the General Statutes.
- (2) Hospital Facilities Rules. – Means all of the following:
  - a. 10A NCAC 13B .6001 – Physical Plant: Location.
  - b. 10A NCAC 13B .6002 – Physical Plant: Roads and Parking.
  - c. 10A NCAC 13B .6104 – General Requirements: Access and Safety.
  - d. 10A NCAC 13B .6201 – Construction Requirements: Medical, Surgical, and Post-Partum Care Unit.
  - e. 10A NCAC 13B .6202 – Construction Requirements: Special Care Unit.
  - f. 10A NCAC 13B .6203 – Construction Requirements: Neonatal Level I and Level II Nursery Unit.
  - g. 10A NCAC 13B .6204 – Construction Requirements: Neonatal Level III and Level IV Nursery.
  - h. 10A NCAC 13B .6205 – Construction Requirements: Psychiatric Unit.
  - i. 10A NCAC 13B .6206 – Construction Requirements: Surgical Department Requirements.
  - j. 10A NCAC 13B .6207 – Construction Requirements: Obstetrical Department Requirements.
  - k. 10A NCAC 13B .6209 – Construction Requirements: Emergency Services.
  - l. 10A NCAC 13B .6210 – Construction Requirements: Imaging Services.
  - m. 10A NCAC 13B .6211 – Construction Requirements: Laboratory Services.
  - n. 10A NCAC 13B .6212 – Construction Requirements: Morgue.
  - o. 10A NCAC 13B .6213 – Construction Requirements: Pharmacy Services.
  - p. 10A NCAC 13B .6214 – Construction Requirements: Dietary Services.
  - q. 10A NCAC 13B .6215 – Construction Requirements: Administration.
  - r. 10A NCAC 13B .6216 – Construction Requirements: Medical Records Services.



- s. 10A NCAC 13B .6217 – Construction Requirements: Central Medical and Surgical Supply Services.
  - t. 10A NCAC 13B .6218 – Construction Requirements: General Storage.
  - u. 10A NCAC 13B .6219 – Construction Requirements: Laundry Services.
  - v. 10A NCAC 13B .6220 – Construction Requirements: Physical Rehabilitation Services.
  - w. 10A NCAC 13B .6221 – Construction Requirements: Engineering Services.
  - x. 10A NCAC 13B .6222 – Construction Requirements: Waste Processing.
  - y. 10A NCAC 13B .6223 – Construction Requirements: Details and Finishes.
  - z. 10A NCAC 13B .6224 – Construction Requirements: Elevator Requirements.
  - aa. 10A NCAC 13B .6225 – Construction Requirements: Mechanical Requirements.
  - bb. 10A NCAC 13B .6226 – Construction Requirements: Plumbing and Other Piping Systems Requirements.
  - cc. 10A NCAC 13B .6227 – Construction Requirements: Electrical Requirements.
- (3) Guidelines. – The American Society for Healthcare Engineering's Facility Guidelines Institute "Guidelines for Design and Construction of Hospitals and Outpatient Facilities."

**SECTION 1.(b)** Repeal Hospital Facilities Rules. – The Secretary of Health and Human Services and the Medical Care Commission shall repeal the Hospital Facilities Rules within 120 days after this act becomes law.

**SECTION 1.(c)** Implementation and Rule-Making Authority. – Before the effective date of the repeal of the Hospital Facilities Rules required pursuant to subsection (b) of this section, the Medical Care Commission shall adopt temporary rules to replace the Hospital Facilities Rules and incorporate by reference all applicable rules, standards, and requirements of the most current edition of the Guidelines. If temporary rules are not adopted before the repeal of the Hospital Facilities Rules required pursuant to subsection (b) of this section, the Commission shall utilize the 2014 Edition of the Guidelines until such time as temporary rules are adopted. Furthermore, the Commission shall adopt permanent rules pursuant to this section.

**SECTION 1.(d)** Additional Rule-Making Authority. – The Medical Care Commission shall adopt rules to replace the Hospital Facilities Rules. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall conform to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in subsection (b1) of G.S. 150B-21.3 as though 10 or more written objections had been received as provided by subsection (b2) of G.S. 150B-21.3. Furthermore, rules adopted pursuant to this section shall be exempt from the provisions of Chapter 150B of the General Statutes that require the preparation of fiscal notes for any rule proposed to incorporate the Guidelines by reference.

**SECTION 1.(e)** Exemption From Periodic Review. – Until such time as the Hospital Facilities Rules are repealed pursuant to subsection (b) of this section, the Hospital Facilities Rules shall be exempt from the periodic review process required pursuant to G.S. 150B-21.3A.

**SECTION 2.** This act is effective when it becomes law and applies to any licensee or prospective applicant who seeks to make specified types of alterations or additions to its hospital facilities or to construct new hospital facilities and who submits plans and specifications to the Department of Health and Human Services pursuant to Article 5 of Chapter 113E of the General Statutes on or after January 1, 2016.

In the General Assembly read three times and ratified this the 30<sup>th</sup> day of June, 2017.

s/ Philip E. Berger  
President Pro Tempore of the Senate

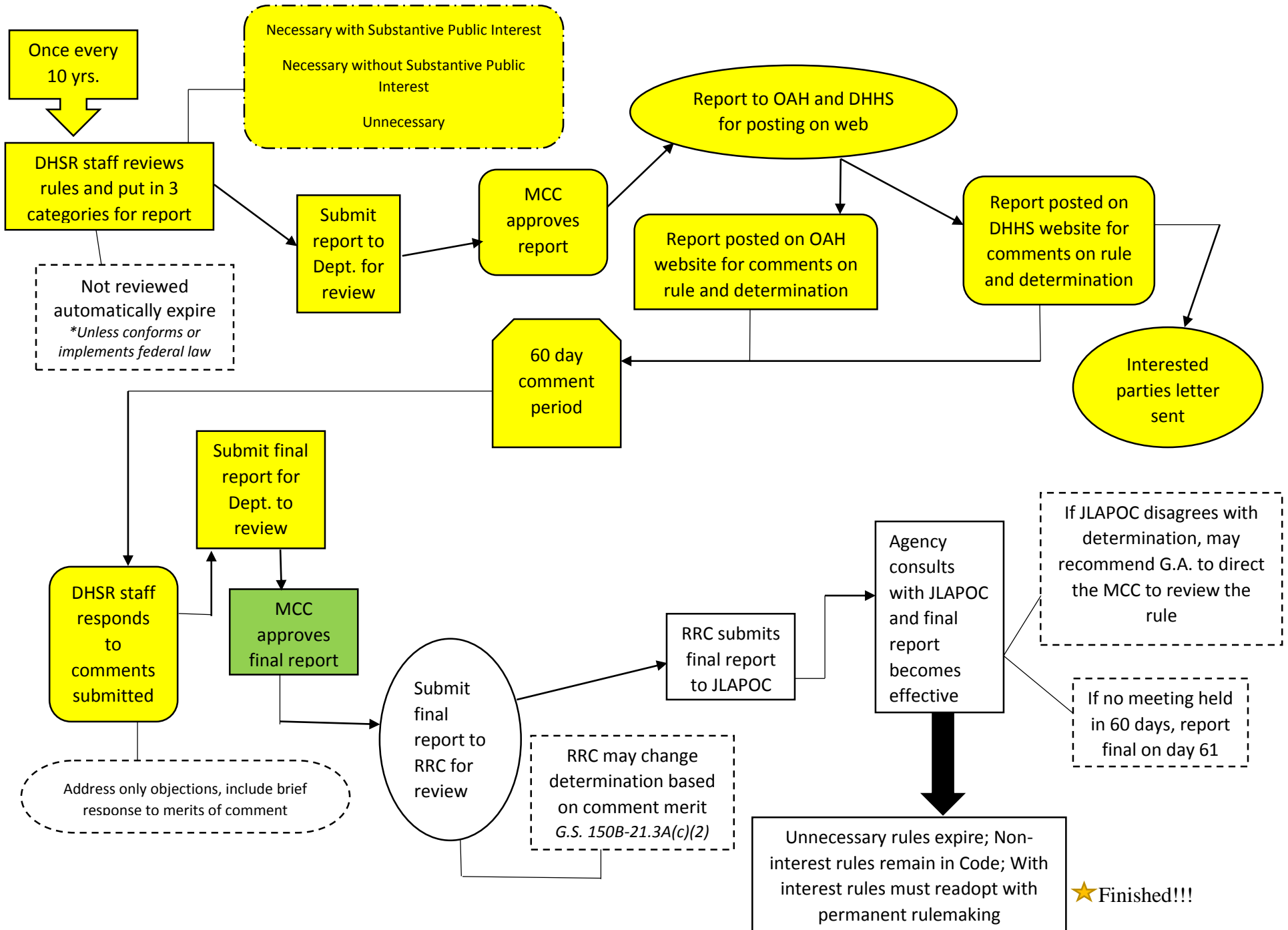
s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 11:48 a.m. this 21<sup>st</sup> day of July, 2017

# Periodic Rules Review Process for: Hospice Licensing Rules - 10A NCAC 13K

Exhibit D



Key:  
 \* Rulemaking will result  
 \* Δ Rulemaking will result,  
 change from initial determination

## Final Category Determination Evaluation Report

Exhibit D/1

G.S. 150B-21.3A Report for 10A NCAC 13K, HOSPICE LICENSING RULES												
Agency - Medical Care Commission												
Comment Period - 1/13/18 - 4/24/18												
Date Submitted - 10/25/17 (10/25/17)												
Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
*	SECTION .0100 - GENERAL INFORMATION	10A NCAC 13K .0102	DEFINITIONS	Amended Eff. February 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.3	Yes	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
	SECTION .0200 - LICENSE	10A NCAC 13K .0201	LICENSE REQUIRED	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.116	No	Necessary without substantive public interest	Select One	Select One	Select One
		10A NCAC 13K .0202	APPLICATION FOR AND ISSUANCE OF A LICENSE	Amended Eff. April 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Select One	Select One
		10A NCAC 13K .0206	ADVERSE ACTION	Amended Eff. February 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Select One	Select One
		10A NCAC 13K .0208	INSPECTIONS	Amended Eff. February 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0209	MULTIPLE PREMISES	Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.116	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0210	COMPLIANCE WITH LAWS	Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.116	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .0300 - ADMINISTRATION	10A NCAC 13K .0301	AGENCY MANAGEMENT AND SUPERVISION	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.100	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0303	ADMINISTRATIVE FINANCIAL AND STATISTICAL RECORDS	Amended Eff. February 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
*	SECTION .0400 - PERSONNEL	10A NCAC 13K .0401	PERSONNEL	Amended Eff. February 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.60	Yes	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
		10A NCAC 13K .0402	INSERVICE EDUCATION AND TRAINING	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.112	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .0500 - SCOPE OF SERVICES	10A NCAC 13K .0501	SERVICE REQUIREMENTS	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.70	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0504	HOME MEDICAL EQUIPMENT AND SUPPLIES	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.106	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0505	SERVICES ARRANGED WITH OTHER AGENCIES AND INDIVIDUALS	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.108	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .0600 - PATIENT/FAMILY CARE	10A NCAC 13K .0601	ACCEPTANCE OF PATIENTS FOR HOSPICE SERVICES	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.56	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
*		10A NCAC 13K .0604	PATIENTS RIGHTS AND RESPONSIBILITIES	Eff. February 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.52	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One

G.S. 150B-21.3A Report for 10A NCAC 13K, HOSPICE LICENSING RULES

Agency - Medical Care Commission

Comment Period - 2/23/18 - 4/24/18

Date Submitted to APO - 4/24/18

Date Submitted to RRC - 4/24/18

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
		10A NCAC 13K .0605	HOME CARE	Eff. April 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
*	SECTION .0700 - PATIENT/FAMILY CARE PLAN	10A NCAC 13K .0701	CARE PLAN	Amended Eff. February 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.56	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
	SECTION .0800 - PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS AND ADMINISTRATION	10A NCAC 13K .0801	PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS	Amended Eff. April 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.106	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0802	ADMINISTRATION OF PHARMACEUTICALS	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.106	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .0900 - MEDICAL RECORDS	10A NCAC 13K .0901	CONTENT OF MEDICAL RECORD	Amended Eff. April 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.104	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .0902	RECORD CONTENT, HANDLING AND RETENTION	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.104	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .1000 - EVALUATION	10A NCAC 13K .1001	EVALUATION REQUIRED	Amended Eff. February 1, 1996	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.10	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
	SECTION .1100 - HOSPICE RESIDENTIAL CARE	10A NCAC 13K .1101	ADMINISTRATION	Eff. June 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1102	HOSPICE RESIDENCE STAFFING	Amended Eff. February 1, 1996	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1103	PHARMACEUTICAL SERVICES	Eff. June 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
*		10A NCAC 13K .1104	DIETARY SERVICES	Eff. June 1, 1991	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
		10A NCAC 13K .1105	HOSPICE VISITATION	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1106	INFECTION CONTROL	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.56	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1107	HOUSEKEEPING AND LINENS	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1108	REPORT OF DEATH	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One



G.S. 1508-21.3A Report for 10A NCAC 13K, HOSPICE LICENSING RULES

Agency: Medical Care Commission

Comment Period: 2/23/18 - 4/24/18

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [1508-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [1508-21.3A(e)]	Federal Regulation Citation	Public Comment Received [1508-21.3A(c)(1)]	Agency Determination Following Public Comment [1508-21.3A(c)(1)]	RRC Determination of Public Comments [1508-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [1508-21.3A(c)(2)]	OAH Next Steps
X		10A NCAC 13K .1109	RESIDENT CARE AREAS	Amended Eff. February 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
		10A NCAC 13K .1110	FURNISHINGS	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1111	HOSPICE RESIDENCE ZONING AND FIRE SAFETY REQUIREMENTS	Eff. June 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1112	DESIGN AND CONSTRUCTION	Eff. June 1, 1991	Necessary without substantive public interest	No		No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
X		10A NCAC 13K .1113	PLANS AND SPECIFICATIONS	Amended Eff. February 1, 1996	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1114	PLUMBING	Eff. June 1, 1991	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1115	WASTE DISPOSAL	Eff. June 1, 1991	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1116	APPLICATION OF PHYSICAL PLANT REQUIREMENTS	Eff. February 1, 1996	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X	SECTION .1200 - HOSPICE INPATIENT CARE	10A NCAC 13K .1201	REQUIREMENTS FOR HOSPICE INPATIENT UNITS	Eff. June 1, 1991	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
		10A NCAC 13K .1202	ADDITIONAL STAFFING REQUIREMENTS FOR HOSPICE INPATIENT UNITS	Amended Eff. January 1, 2010	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1203	ADDITIONAL SERVICES REQUIRED FOR HOSPICE INPATIENT CARE	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.100	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
X		10A NCAC 13K .1204	ADDITIONAL PATIENT CARE AREA REQUIREMENTS FOR HOSPICE INPATIENT UNITS	Amended Eff. February 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	Yes	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1205	FURNISHINGS FOR HOSPICE INPATIENT CARE	Eff. June 1, 1991	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1206	HOSPICE INPATIENT FIRE AND SAFETY REQUIREMENTS	Eff. June 1, 1991	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.113	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1207	HOSPICE INPATIENT REQUIREMENTS FOR HEATING/AIR CONDITIONING	Eff. June 1, 1991	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
X		10A NCAC 13K .1208	HOSPICE INPATIENT REQUIREMENTS/EMERGENCY ELECTRICAL SERVICE	Eff. June 1, 1991	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One

G.S. 150B-21.3A Report for 10A NCAC 13K, HOSPICE LICENSING RULES

Agency - Medical Care Commission

Comment Period - 2/23/18 - 4/24/18

Date Submitted to APO - 4/24/18 by RRC Staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
		10A NCAC 13K .1209	HOSPICE INPATIENT REQUIREMENTS FOR GENERAL ELECTRICAL	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
		10A NCAC 13K .1210	OTHER HOSPICE INPATIENT REQUIREMENTS	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	No	Necessary without substantive public interest	Select One	Necessary without substantive public interest and should remain in effect without further action	Select One
* Δ		10A NCAC 13K .1211	ADDITIONAL PLUMBING REQUIREMENTS/HOSPICE INPATIENT UNITS	Eff. June 1, 1991	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	42 CFR 418.110	Yes	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One
*		10A NCAC 13K .1212	APPLICATION OF PHYSICAL PLANT REQUIREMENTS	Eff. February 1, 1996	Necessary with substantive public interest	No		No	Necessary with substantive public interest	Select One	Necessary with substantive public interest and must be readopted	Select One

Periodic Rules Review and Expiration of Existing Rules  
Subchapter 13K – Hospice Licensing Rules  
Public Comments and Agency Response to Comments

**Exhibit D/2**

Rule Citation & Title	Date	Commenter	Comment	Agency Response
1) 10A NCAC 13K .0102 – Definitions	2/22/18	1a) Erin Glendening, DHSR erin.glendening@dhhs.nc.gov	This is a test to verify that everything is working.	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment is about the test of the electronic comment reporting system.</p> <p>The Agency will not change the determination of this rule.</p>
	3/1/18	1b) Thomas Boone, Medical Services of America, TB66132@gmail.com	<p>Current federal laws recognize a nurse practitioner as an attending physician (CR 3226 published in 2003; Medicare Claims Processing Manual 30.2); further, the most recent budget act contains provisions to allow physician assistants to provide care for hospice patients consistent with their background and training.</p> <p>Recommend defining attending physician as an MD, DO, NP, or PA licensed in NC.</p>	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment recommends the rule be revised to be consistent with rules or guidance from CMS that include NP and PA in their definition of attending physician. This comment will be taken into consideration when the rule is revised.</p> <p>The Agency will not change the determination of this rule</p>
	4/22/18	1c) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	<p>I am writing on behalf of Teleios Collaborative Network (TCN), an organization providing services to community based not-for-profit hospice providers. We represent five hospice agencies – Catawba Regional Hospice, Four Seasons Compassion for Life, Caldwell Hospice &amp; Palliative Care, Mountain Valley Hospice &amp; Palliative Care, and Yancey Hospice and Palliative Care. These comments are submitted with input from those agencies. .0102 (2) – We request that you amend the definition of attending physician to include a nurse practitioner and a physician assistant. Currently Section 1861(dd)(3)(B) of the Social Security Act, as well as the Medicare Conditions of Participation, include a nurse practitioner. A federal law was passed earlier this year that amends Section 1861(dd)(3)(B) of the Social Security Act to include physician assistant in the definition of attending physician for hospices effective January 1, 2019. Medicare is expected to add the physician assistant language to the Medicare Conditions of Participation with the fiscal year 2019 hospice rule, a draft of which should be published any day. This expansion of the definition will allow for more timely care of hospice patients as there is a shortage of</p>	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment recommends the rule be revised to be consistent with rules or guidance from CMS that include NP and PA in their definition of attending physician. This comment will be taken into consideration when the rule is revised.</p> <p>The Social Worker comment indicate several areas regarding the definition of social worker that warrant a thoughtful review and the potential for a revision to the existing rule. We have noted the comment and it will be taken into consideration when the rule is revised.</p>

Rule Citation & Title	Date	Commenter	Comment	Agency Response
			<p>qualified physicians, particularly in rural areas. .0102 (30) – We request that you amend the definition of social worker to include those who have a degree in sociology or other fields related to social work. This will be in concert with the Medicare definition of ‘... degree in psychology, sociology, or other field related to social work’ and will give hospices more flexibility in hiring to meet the demanding role of a hospice social worker. Many applicants have the experience and education in other fields, but are not qualified due to their specific degree.</p>	<p>The Agency will not change the determination of this rule</p>
	4/23/18	1d) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	<p>13K .0102 (2) – We request that you expand the definition of attending physician to include a nurse practitioner and a physician assistant. Currently Section 1861(dd)(3)(B) of the Social Security Act, as well as the Medicare Conditions of Participation, include a nurse practitioner.</p> <p>A federal law was passed earlier this year that amends Section 1861(dd)(3)(B) of the Social Security Act to include physician assistant in the definition of attending physician for hospices effective January 1, 2019. Medicare is expected to add the physician assistant language to the Medicare Conditions of Participation with the fiscal year 2019 hospice rule, a draft of which should be published very soon. This expansion of the definition will allow for more timely care of hospice patients as there is a shortage of qualified physicians, particularly in rural areas.</p> <p>13K .0102 (30) – We request that you amend the definition of social worker to include those who have a degree in sociology or other fields related to social work. This will be in concert with the Medicare definition of “... degree in psychology, sociology, or other field related to social work” and will give hospices more flexibility in hiring to meet the demanding role of a hospice social worker. Many applicants have the experience and education in other fields, but are not eliminated from consideration because they do not have the specific degree.</p>	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment recommends the rule be revised to be consistent with rules or guidance from CMS that include NP and PA in their definition of attending physician. This comment will be taken into consideration when the rule is revised.</p> <p>The comment indicate several areas regarding the definition of social worker that warrant a thoughtful review and the potential for a revision to the existing rule. We have noted the comment and it will be taken into consideration when the rule is revised.</p> <p>The Agency will not change the determination of this rule</p>
2) 10A NCAC 13K .0401 – Personnel	4/22/18	2a) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	<p>.0401 (a) – We suggest the statement be edited to remove 'Airborne and' from the third sentence as that OSHA regulation does not address airborne pathogens. In addition, in the last sentence, OSHA does not prescribe tuberculosis testing. We suggest that 'prescribed by OSHA standards' be changed to 'in accordance with current CDC guidelines' as this will allow hospices to modify their practices as recommendations change. .0401 (d) (6) – Please revise that to remove the inference that airborne pathogens are addressed in 29 CFR 1910.</p>	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment indicates several areas that warrant a thoughtful review and the potential need for a revision to the existing rule. We have noted the comment and it will be taken into consideration when the rule is reviewed.</p> <p>The Agency will not change the determination of this rule</p>

Rule Citation & Title	Date	Commenter	Comment	Agency Response
	4/23/18	2b) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	<p>13K .0401 (a) – We suggest the statement be edited to remove “Airborne and” from the third sentence as that OSHA regulation does not address airborne pathogens. In addition, in the last sentence, OSHA does not prescribe tuberculosis testing.</p> <p>We suggest that “prescribed by OSHA standards” be changed to “in accordance with current CDC guidelines” as this will allow hospices to modify their practices as recommendations change.</p> <p>13K .0401 (d) (6) – Please revise this item to remove the inference that airborne pathogens are addressed in 29 CFR 1910.</p>	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>The comment indicates several areas that warrant a thoughtful review and the potential need for a revision to the existing rule. We have noted the comment and it will be taken into consideration when the rule is reviewed.</p> <p>The Agency will not change the determination of this rule.</p>
3) 10A NCAC 13K .1204 – Additional Patient Care Area Requirements for Hospice Inpatient Units	4/22/18	3a) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	.1204 (c) – We request removal of the requirement for a 'central bathing area' in the hospice inpatient unit and allowance for more modern and patient-friendly bathing facilities. More and more hospices are finding that those rooms are not utilized. Patients are only in the inpatient unit for a few days and the majority are there for pain and symptom management. They are not able to tolerate being moved from a bed to a wheelchair or stretcher and then down the hall for personal care in another room. Also, this exposes them to numerous temperature changes in the hall and the bathing room which can further increase their discomfort. In addition, many patients are actively dying when admitted to the hospice facility and the family wants to be at the bedside as much as possible so they do not want the patient taken from the room. Most hospice patients in the inpatient facility prefer a bed bath so their activity can be minimized. For those patients who want a shower and can get out of bed without significant discomfort, patient bathrooms can be, and in most hospice facilities are, equipped with roll in showers. This allows a patient to receive personal care in the privacy of their own room. We suggest that the Department work with hospice providers to determine suitable alternative language.	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>This comment agrees with the Agency’s assessment and indicates one requirement that warrants a thoughtful review regarding the concern related to the existing rule language. The comment will be taken into consideration when the rule is reviewed.</p> <p>The Agency will not change the determination of this rule.</p>
	4/23/18	3b) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	.1204 (c) – We request removal of the requirement for a “central bathing area” in the hospice inpatient unit and allowance for more modern and patient-friendly bathing facilities. More and more hospices are finding that those rooms are not utilized. Patients are only in the inpatient unit for a few days and the majority are there for pain and symptom management. They are not able to tolerate being moved from a bed to a wheelchair or stretcher and then down the hall for personal care in another room. Also, this could expose the patient to numerous temperature changes in the hall and the bathing room, further increasing their discomfort. In addition, many patients are actively dying when admitted to the hospice facility and the family wants to be at the bedside as much as possible so they do not want the patient taken from the room.	<p>This rule was determined as Necessary With Substantive Public Interest.</p> <p>This comment agrees with the Agency’s assessment and indicates one requirement that warrants a thoughtful review regarding the concern related to the existing rule language. The comment will be taken into consideration when the rule is reviewed.</p> <p>The Agency will not change the determination of this rule.</p>

Rule Citation & Title	Date	Commenter	Comment	Agency Response
			Furthermore, most hospice patients in the inpatient facility prefer a bed bath so their activity can be minimized. For those patients who want a shower and can get out of bed without significant discomfort, patient bathrooms can be, and in most hospice facilities are, equipped with roll in showers. This allows a patient to receive personal care in the privacy of their own room. We suggest that the Department work with hospice providers to determine suitable alternative language.	
4) 10A NCAC 13K .1211 – Additional Plumbing Requirements/ Hospice Inpatient Units	4/22/18	4a) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	.1211 – We request that the Department consider a change in this rule to allow hospices to have lower water temperatures. The rule states that the hot water system in patient areas must be adequate to provide a temperature range of 110-116 degrees Fahrenheit. The Medicare Hospice Conditions of Participation state that the 'recommended water temperatures at the plumbing fixtures should be maintained at or below 110 degrees.'	<p>This rule was determined as Necessary Without Substantive Public Interest.</p> <p>The comment indicates one requirement that warrants a thoughtful review and the potential need for a revision to the existing rule. The agency has noted the comment in reference to the Interpretive Guidance for §418.110(h). The comment will be taken into consideration when the rule is reviewed.</p> <p>The Agency will change the determination of this rule to necessary with substantive public interest.</p>
	4/23/18	4b) Annette Kiser, Teleios Collaborative Network akiser@teleioscn.org	13K .1211 – We request that the Department consider a change in this rule to allow hospices to have lower water temperatures. The rule states that the hot water system in patient areas must be adequate to provide a temperature range of 110-116 degrees Fahrenheit. The Medicare Hospice Conditions of Participation state that the “recommended water temperatures at the plumbing fixtures should be maintained at or below 110 degrees.”	<p>This rule was determined as Necessary Without Substantive Public Interest.</p> <p>The comment indicates one requirement that warrants a thoughtful review and the potential need for a revision to the existing rule. The agency has noted the comment in reference to the Interpretive Guidance for §418.110(h). The comment will be taken into consideration when the rule is reviewed.</p> <p>The Agency will change the determination of this rule to necessary with substantive public interest.</p>

**SUBCHAPTER 13K – HOSPICE LICENSING RULES****SECTION .0100 – GENERAL INFORMATION****10A NCAC 13K .0101 RESERVED FOR FUTURE CODIFICATION****10A NCAC 13K .0102 DEFINITIONS**

In addition to the definitions set forth in G.S. 131E-201 the following definitions shall apply throughout this Subchapter following:

- (1) "Agency" means a licensed hospice as defined in Article 10 G.S. 131E-201(3).
- (2) "Attending Physician" means the physician licensed to practice medicine in North Carolina who is identified by the patient at the time of hospice admission as having the most significant role in the determination and delivery of medical care for the patient.
- (3) "Care Plan" means the proposed method developed in writing by the interdisciplinary care team through which the hospice seeks to provide services which meet the patient's and family's medical, psychosocial and spiritual needs.
- (4) "Clergy Member" means an individual who has received a degree from an theological school and has fulfilled appropriate denominational seminary requirements; or an individual who, by ordination or authorization from the individual's denomination, has been approved to function in a pastoral capacity. Each hospice shall designate a clergy member responsible for coordinating spiritual care to hospice patients and families.
- (5) "Coordinator of Patient Family Volunteers" means an individual on the hospice staff who coordinates and supervises the activities of all patient family volunteers.
- (6) "Dietary Counseling" means counseling given by a licensed dietitian as defined in G.S. 90-357.
- (7) "Director" means the person having administrative responsibility for the operation of the hospice.
- (8) "Governing Body" means the group of persons responsible for overseeing the operations of the hospice, specifically for the development and monitoring of policies and procedures related to all aspects of the operations of the hospice program. The governing body ensures that all services provided are consistent with accepted standards of hospice practice.
- (9) "Hospice" means a coordinated program of services as defined in G.S. 131E-176(13a).
- (10) "Hospice Caregiver" means an individual on the hospice staff who has completed hospice caregiver training as defined in 10A NCAC 13K .0402 and is assigned to a hospice residential facility or unit.
- (11) "Hospice Inpatient Facility or Unit" means a licensed facility as defined in G.S. 131E-201(3a).
- (12) "Hospice Residential Facility" as defined in G.S. 131E-201(5a) is a facility licensed to provide hospice care to hospice patients as defined in G.S. 131E-201(4) and their families in a group residential setting.
- (13) "Hospice Staff" means members of the interdisciplinary team as defined in G.S. 131E-201(7), nurse aides, administrative and support personnel and patient family volunteers.
- (14) "Informed Consent" means the agreement to receive hospice care made by the patient and family which specifies in writing the type of care and services to be provided. The informed consent form shall be signed by the patient prior to service. If the patient's medical condition is such that a signature cannot be obtained, a signature shall be obtained from the individual having legal guardianship, applicable power of attorney, or the family member or individual assuming the responsibility of primary caregiver.
- (15) "Inpatient Beds" means beds licensed as such by the Department of Health and Human Services for use by hospice patients, for medical management of symptoms or for respite care.
- (16) "Interdisciplinary Team" means a group of hospice staff as defined in G.S. 131E-201(7).
- (17) "Licensed Practical Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A.
- (18) "Medical Director" means a physician licensed to practice medicine in North Carolina who directs the medical aspects of the hospice's patient care program.
- (19) "Nurse Aide" means an individual who is authorized to provide nursing care under the supervision of a licensed nurse, has completed a training and competency evaluation program or competency evaluation program and is listed on the Nurse Aide Registry, at the Division of Health Service Regulation. If the nurse aide performs Nurse Aide II tasks, he or she must also meet the requirements established by the N.C. Board of Nursing as defined in 21 NCAC 36 .0405.
- (20) "Occupational Therapist" means a person duly licensed as such, holding a current license as required by G.S. 90-270.29.

- (21) "Patient and Family Care Coordinator" means a registered nurse designated by the hospice to coordinate the provision of hospice services for each patient and family.
- (22) "Patient Family Volunteer" means an individual who has received orientation and training as defined in Rule .0402 of this Subchapter, and provides volunteer services to a patient and the patient's family in the patient's home or in a hospice inpatient facility or unit, or a hospice residential facility.
- (23) "Pharmacist" means an individual licensed to practice pharmacy in North Carolina as required in G.S. 90-85(15).
- (24) "Physical Therapist" means an individual holding a valid current license as required by G.S. 90, Article 18B.
- (25) "Physician" means an individual licensed to practice medicine in North Carolina.
- (26) "Premises" means the location or licensed site from which the agency provides hospice services or maintains patient service records or advertises itself as a hospice agency.
- (27) "Primary Caregiver" means the family member or other person who assumes the overall responsibility for the care of the patient in the home.
- (28) "Registered Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A.
- (29) "Respite Care" means care provided to a patient for the purpose of temporary relief to family members or others caring for the patient at home.
- (30) "Social Worker" means an individual who performs social work and holds a bachelor's or advanced degree in social work from a school accredited by the Council of Social Work Education or a bachelor's or an advanced degree in psychology, counseling or psychiatric nursing.
- (31) "Speech and Language Pathologist" means an individual holding a valid current license as required by G.S. 90, Article 22.
- (32) "Spiritual Caregiver" means an individual authorized by the patient and family to provide for their spiritual direction.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; February 1, 1995; June 1, 1991; November 1, 1989.*

## **SECTION .0200 - LICENSE**

### **10A NCAC 13K .0201 LICENSE REQUIRED**

Each hospice agency premises shall obtain a license unless exempted by G.S. 131E-203.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996.*

### **10A NCAC 13K .0202 APPLICATION FOR AND ISSUANCE OF A LICENSE**

(a) An application for a license to operate a hospice agency or facility shall be submitted to the Department prior to the scheduling of an initial licensure survey. The hospice agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, including all information required by the Department as noted in Rule .0303 of this Subchapter.

(b) The Department shall issue a license to each hospice agency premises when determined to be in compliance with licensure rules. Initial licensure inspections shall be conducted at the Department offices. On-site inspections shall include one or all sites as described in Rule .0209 of this Subchapter. Initial licensure shall be for a period of not more than one year. Subsequent licensure shall extend for a minimum of one year and a maximum of three years, at the discretion of the Department. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises. The agency shall also post a sign at the public access door with the hospice agency name.

(d) The license shall be issued for the premise and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. If the agency operates an inpatient facility or unit, or a residential facility to provide inpatient or residential hospice care, the number of beds for each shall be reflected on the license.



(e) Prior to change of ownership or the establishment of a new hospice agency, the agency shall be in compliance with all the applicable statutes and rules established under Article 10 of G.S. 131E.

(f) The licensee shall notify the Department in writing of any proposed change in ownership or name at least 30 days prior to the effective date of the change.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. April 1, 1996; June 1, 1991; November 1, 1989.*

**10A NCAC 13K .0203 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0204 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0205 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0206 ADVERSE ACTION**

A hospice may appeal any adverse decision made by the Department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and Departmental Rules 10ANCAC 01 et seq. As provided for in G.S. 131E-206, the Department shall seek injunctive relief to prevent an entity from establishing or operating a hospice agency without a license.

- (1) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:
  - (a) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under that Part; and
  - (b) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
  - (c) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the hospice licensure rules for the foreseeable future.The Department shall give the licensee written notice of the amendment of its license. This notice shall be given by registered or certified mail or by personal service and shall set forth the reasons for the action.
- (2) The provisional license shall be effective immediately upon its receipt by the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises in lieu of the full license. The provisional license shall remain in effect until:
  - (a) the Department restores the licensee to full licensure status; or
  - (b) the Department revokes the licensee's license; or
  - (c) the end of the licensee's licensure year.If a licensee has a provisional license at the time that the licensee submits a renewal application, the license, if renewed, shall also be provisional license unless the Department determines that the licensee can be returned to full license status. A decision to issue a provisional license shall be stayed during the pendency of an administrative appeal and the licensee may continue to display its full license during the appeal.
- (3) The Department may revoke a license whenever:
  - (a) The Department finds that:
    - (i) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under those parts; and
    - (ii) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
  - (b) The Department finds that:
    - (i) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E; and
    - (ii) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with the hospice licensure rules for the foreseeable future; or

- (c) The Department finds that there has been any failure to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under those parts that endangers the health, safety or welfare of the patients receiving services from the agency.  
The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Sub-Item (3)(a), (b) or (c) of this Rule.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; November 1, 1989.*

#### **10A NCAC 13K .0207 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 13K .0208 INSPECTIONS**

- (a) Any hospice agency or facility shall be subject to inspections by authorized representatives of the Department at any time as a condition of holding such license.
- (b) Any person or organization subject to licensure which presents itself to the public as a hospice which does not hold a license, and is or may be in violation of Rule .0202 of this Section and G.S. 131E-203(a) shall be subject to proper inspections at any time by authorized representatives of the Department.
- (c) Representatives of the Department shall make their identities known to the person in charge prior to the inspection.
- (d) Licensure inspection of medical records shall be carried out in accordance with G.S. 131E-207.
- (e) An inspection shall be conducted whenever the purpose of the inspection is to determine whether the agency complies with the provisions of this Subchapter or whenever there is reason to believe that some condition exists which is not in compliance with the rules in this Subchapter. The agency shall allow immediate access to its premises and the records necessary to conduct an inspection and determine compliance with the rules of this Subchapter. Failure to do so shall result in termination of the survey and may result in injunctive relief as outlined in G.S. 131E-206.
- (f) An agency shall file a plan of correction for cited deficiencies within 10 working days of receipt of a report of deficiencies. The Department shall review and respond to a written plan of correction within 10 working days of receipt.
- (g) Representatives of the Department may visit patients in their homes to assess the agency's compliance with the patients' plans of care and with the licensure rules. Patients shall be contacted by the hospice agency staff in the presence of the Department staff for permission to visit.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996.*

#### **10A NCAC 13K .0209 MULTIPLE PREMISES**

If a person operates multiple hospice agency premises:

- (1) the Department may conduct inspections at any or all of the premises and may issue a license to each of the premises based upon inspection of any or all of the premises;
- (2) with 72 hours advance notice, the Department may request records from any of the premises necessary to ensure compliance with the rules of this Subchapter be brought to the site being inspected, including the portions of personnel records subject to review. For agencies for whom a business or government policy precludes the disclosure of employee evaluations, a statement signed by the employee's supervisor attesting to its completion shall be accepted;
- (3) the premises may share staff or administrative staff, and may centralize the maintenance of records.

*History Note: Authority G.S. 131E-202;  
Eff. February 1, 1996.*

#### **10A NCAC 13K .0210 COMPLIANCE WITH LAWS**

- (a) The hospice agency shall be in compliance with all applicable federal, state and local laws, rules and regulations.
- (b) Staff of the hospice agency shall be currently licensed, listed or registered in accordance with applicable laws of the State of North Carolina.

*History Note: Authority G.S. 131E-202;*

*Eff. February 1, 1996.*

## **SECTION .0300 - ADMINISTRATION**

### **10A NCAC 13K .0301 AGENCY MANAGEMENT AND SUPERVISION**

(a) The governing body or its designee shall establish and implement at a minimum, a description of written policies governing all aspects of the hospice program. Such policies shall be available for inspection by the Department and shall include at a minimum:

- (1) provision for offering of the full scope of hospice services in the agency's defined service area;
- (2) admission and discharge policies;
- (3) patient's rights policies, including the right to have an advance directive;
- (4) personnel policies and records;
- (5) orientation, patient family volunteer training, and inservice education policies;
- (6) communicable disease exposure and infection control policies;
- (7) care planning and updates policies;
- (8) medical record content and handling of orders for drug treatment administration;
- (9) annual evaluation of the agency;
- (10) storage, preventive maintenance, and infection control of supplies and equipment;
- (11) handling of complaints about services; and
- (12) emergency preparedness and disaster planning.

(b) The governing body shall designate an individual to serve as agency director.

(c) There shall be written policies that specify the authority and responsibilities of the director. In the event this position becomes vacant, the Department shall be notified in writing within five working days of the vacancy along with the name of the replacement if available. Agency policies shall define the order of authority in the absence of the administrator.

(d) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .0505 of this Subchapter.

(e) A hospice agency shall have written policies which identify the specific geographic areas in which the agency provides its services.

(f) If an agency plans to permanently expand its geographic service area beyond that currently on file with the Department without opening an additional site, the Department shall be notified in writing 30 days in advance. The agency must offer its full scope of hospice services in its entire geographic service area.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996.*

### **10A NCAC 13K .0302 RESERVED FOR FUTURE CODIFICATION**

### **10A NCAC 13K .0303 ADMINISTRATIVE FINANCIAL AND STATISTICAL RECORDS**

(a) The hospice shall establish, maintain and make available for inspection the hospice annual budget.

(b) The hospice shall record, maintain and make available to the Department statistical records as requested. Records shall include: hours worked by staff, including patient family volunteers; patient census information regarding the numbers of referrals, admissions and discharges; and patient diagnoses and service location (home or inpatient).

(c) Records shall be retained for a period of not less than five years.

(d) When a hospice agency or facility operates as a part of a health care facility licensed under Article 5 or 6 of G.S. 131E, or as part of a larger diversified agency, records of hospice activities and expenditures that are separate and identifiable shall be maintained for the hospice agency.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; November 1, 1989.*

## **SECTION .0400 - PERSONNEL**

### **10A NCAC 13K .0401 PERSONNEL**

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with 10A NCAC 41A. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Airborne and Bloodborne Pathogens). Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty one dollars (\$21.00) and may be purchased with a credit card. Hands-on care employees must have a baseline skin test for tuberculosis. Individuals who test positive must demonstrate non-infectious status prior to assignment in a patient's home. Individuals who have previously tested positive to the tuberculosis skin test shall obtain a baseline and subsequent annual verification that they are free of tuberculosis symptoms. The verification shall be obtained from the local health department, a private physician or health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Health and Human Services, Division of Public Health, 1902 Mail Service Center, Raleigh, NC 27699-1902 will provide, free of charge guidelines for conducting verification and Form DEHNR 3405 (Record of Tuberculosis Screening). Employees identified by agency risk assessment to be at risk for exposure are required to be subsequently tested at intervals prescribed by OSHA standards.

(b) Written policies shall be established and implemented which include personnel record content, orientation, patient family volunteer training and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position, including volunteers involved in direct patient/family services, shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(d) Personnel records shall be established and maintained for all hospice staff, both paid and direct patient/family services volunteers. These records shall be maintained at least one year after termination from agency employment. When requested, the records shall be available on the agency premises for inspection by the Department. The records shall include:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the staff;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis annual screening for those employees for whom the test is necessary as described in Paragraph (a) of this Rule;
- (5) documentation of Hepatitis B immunization or declination for hands on care staff;
- (6) airborne and bloodborne pathogen training for hands on care staff, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually;
- (8) verification of staff credentials as applicable;
- (9) records of the verification of competencies by agency supervisory personnel of all skills required of hospice services personnel to carry out patient care tasks to which the staff is assigned. The method of verification shall be defined in agency policy.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; November 1, 1989.*

#### **10A NCAC 13K .0402 INSERVICE EDUCATION AND TRAINING**

(a) Written policies shall be established and implemented which include orientation, patient family volunteer training and inservice education for all hospice staff. Hospice residential facilities shall establish and implement a policy addressing hospice caregiver training. Attendance records on training shall be kept. Patient family care volunteers shall be required to meet the requirements of Rule .0401 of this Section. Training hours for patient family care volunteers shall include a minimum of 12 hours. Staff shall be required to participate in a minimum of eight hours included with other job specific training.

(b) Training for hospice staff, including patient family volunteers, providing direct patient and family services shall include, but not be limited to the following:

- (1) an introduction to hospice;
- (2) the patient family volunteer role in hospice care;
- (3) concepts of death and dying;

- (4) communication skills;
- (5) care and comfort measures;
- (6) diseases and medical conditions;
- (7) psychosocial and spiritual issues related to death and dying;
- (8) the concept of the hospice family;
- (9) stress management;
- (10) bereavement;
- (11) infection control;
- (12) safety;
- (13) confidentiality; and
- (14) patient rights.

(c) In addition to the training described in Paragraph (b) of this Rule, the following additional training shall be provided to hospice caregivers assigned to a hospice residential facility:

- (1) training specific to the types of medications being administered when assisting the patient with self administration of medicines and provision of personal care from a curriculum approved by the Division of Health Service Regulation;
- (2) orientation and instruction specific to the care needs of individual patients in the hospice residential facility; and
- (3) notification criteria for licensed nursing staff as defined in the agency policies and procedures.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; February 1, 1995; November 1, 1989.*

**10A NCAC 13K .0403 RESERVED FOR FUTURE CODIFICATION**

**SECTION .0500 - SCOPE OF SERVICES**

**10A NCAC 13K .0501 SERVICE REQUIREMENTS**

The governing body shall ensure through policies and implemented procedures that the following services encompassing the essential elements of hospice care be provided, either directly by hospice personnel, or by contractual arrangement:

- (1) Hospice nursing services, available 24 hours a day, by or under the supervision of a registered nurse; provided in accordance with the North Carolina Nurse Practice Act (G.S. 90, Article 9A) and the hospice care plan; and sufficient to ensure that nursing needs of each patient are met.
  - (a) Registered nurse duties include the following as a minimum:
    - (i) regularly assess the nursing needs of the hospice patient;
    - (ii) develop and implement the patient's hospice nursing care plan;
    - (iii) provide hospice nursing services, treatment, and diagnostic and preventive procedures;
    - (iv) initiate nursing procedures appropriate for the patient's hospice care and safety;
    - (v) observe signs and symptoms and report to the physician any unexpected changes in the patient's physical or emotional condition;
    - (vi) teach, supervise, and counsel the hospice patient and family members about providing care for the patient at home; and
    - (vii) supervise and train other nursing service personnel.
  - (b) Licensed practical nurse duties are delegated by and performed under the supervision of a registered nurse. Consistent with the hospice care plan, duties may include:
    - (i) participating in assessment of the patient's condition;
    - (ii) implementing nursing activities, including the administration of prescribed medical treatments and medications;
    - (iii) assisting in teaching the hospice patient and family members about providing care to the patient at home; and
    - (iv) delegating tasks to nurse aides and supervising their performance of tasks within the limitations established in 21 NCAC 36 .0225(d)(2) adopted by reference.
  - (c) The agency must retain current nursing on-call schedules and previous schedules for one year and make them available, on request, to the Department.

- (2) Social work services which shall include, but not be limited to conducting an assessment of the psychosocial needs of the patient and family with the establishment of goals in the care plan to meet those needs; on-going counseling related to issues of death and dying to the patient and family as needed; and assisting the patient and family in the utilization of appropriate community resources.
- (3) Spiritual counseling shall be offered to each hospice patient/family. The hospice shall assure that:
  - (a) no spiritual value or belief system is imposed on patients and families;
  - (b) a spiritual assessment is completed on each patient during the admission process; and
  - (c) a liaison and consultation is maintained with the patient family clergy or spiritual caregiver and other community based clergy or spiritual caregivers.
- (4) Patient family volunteer services for a broad range of activities under the direction of the coordinator of patient family volunteers.
- (5) Inpatient care services, for symptom management or respite care in a licensed hospital, nursing facility or licensed hospice inpatient facility, unless the hospice operates its own inpatient facility. The hospice shall assure that:
  - (a) a written agreement, is signed by both providers, which assures that the inpatient facility will provide care and services to hospice patients when necessary;
  - (b) the inpatient provider has policies consistent with the needs of hospice patients and their families and will, if necessary, modify policies such as visiting hour restrictions and routine tests, to meet those needs;
  - (c) the hospice monthly updated plan of care is furnished to the inpatient provider to ensure that the regimen established is followed as closely as feasible during the inpatient stay;
  - (d) all inpatient treatment and services are documented in the inpatient medical record and copy of the discharge summary retained as part of the hospice record; and
  - (e) effective transition from one type care to another be maintained with continuity of care being the primary goal.
- (6) If the hospice provides or arranges for nurse aide services, those services shall be provided in accordance with physician's orders and interdisciplinary team care plan.
  - (a) Nurse aides shall only be assigned duties for which competence has been demonstrated and recorded in appropriate personnel records.
  - (b) Nurse aide duties may include, but are not limited to:
    - (i) providing or assisting with personal care, i.e. bathing, mouth care, hair and skin care;
    - (ii) checking vital signs and observing the patient's condition;
    - (iii) assisting with ambulation and limited, routine exercises.
  - (c) All nurse aide services shall be performed in accordance with a written assignment prepared by and under the supervision of the registered nurse. Supervision shall include a visit to the home by the nurse at least every two weeks, with or without the aide's presence, to assess the care and services provided. Documentation of supervisory visits shall be maintained in the medical record and include an assessment of the aide's performance in carrying out assigned duties and of the aide's relationship with the patient and family.
- (7) Additional services shall be offered either directly by the hospice or by arrangement when ordered by the physician. These include physical therapy, occupational therapy, nutritional assessment and dietary counseling and other services as needed and ordered by the physician in accordance with the hospice plan of care.
- (8) Bereavement counseling shall be offered to family members and others identified in the bereavement plan of care for a period of 12 months after the patient's death. The hospice shall assure that:
  - (a) an assessment of survivor risk factors is completed during the patient's admission to hospice and during the patient's illness;
  - (b) the bereavement care plan is established within six weeks after the patient's death;
  - (c) the bereavement care plan shall contain information about who shall receive bereavement services and what services will be offered;
  - (d) the bereavement care plan is reviewed quarterly at a minimum or more often as needed; and
  - (e) discharge from bereavement services before the 12 months expire is justified and documented.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;*

*Amended Eff. February 1, 1996; June 1, 1991; November 1, 1989.*

**10A NCAC 13K .0502    RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0503    RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0504    HOME MEDICAL EQUIPMENT AND SUPPLIES**

(a) The hospice shall make arrangements for obtaining any necessary supplies, equipment or prosthetic devices needed by the patient in the home, e.g., dressings, catheters, and oxygen. If the agency provides its own equipment and supplies, such services shall be in compliance with G.S. 90-85.22 unless exempted by the law.

(b) The agency shall have policies that address at a minimum:

- (1) Set-up, delivery, electrical safety and environmental requirements for equipment.
- (2) Proper cleaning and storage, preventive maintenance and repair according to manufacturer's guidelines.
- (3) Transportation, tracking and recall of equipment to meet all applicable regulatory requirements.
- (4) Emergency preparedness and backup of systems for equipment or power failure.
- (5) Patient instruction materials for each item of home medical equipment or supplies provided. Appropriate staff shall document the instruction.

*History Note:    Authority G.S. 131E-202;  
                      Eff. November 1, 1984;  
                      Amended Eff. February 1, 1996.*

**10A NCAC 13K .0505    SERVICES ARRANGED WITH OTHER AGENCIES AND INDIVIDUALS**

(a) When a hospice makes arrangements for the provision of services by other agencies and individuals; there shall be a written agreement, signed by both parties prior to the initiation of services, which includes the following:

- (1) the specific service to be provided;
- (2) the period of time the contract is to be in effect;
- (3) the availability of service;
- (4) the financial arrangements;
- (5) the provision for supervision of contracted personnel where applicable;
- (6) the verification that any individual providing services is appropriately licensed or registered as required by statute;
- (7) the assurance that individuals providing services under contractual arrangement meet the same requirements as found in this Subchapter for hospice staff;
- (8) the provision for the documentation of services provided in the patient's medical record; and
- (9) provision for the sharing of assessment and care plan data.

(b) All contracted services shall be provided in accordance with the orders of the attending physician and the care plan.

(c) The hospice shall assure that all contracted services are provided in accordance with the agreement. The agreement shall be reviewed annually and updated as needed.

(d) The hospice shall provide information and training as necessary on the hospice philosophy and concept of care to all agencies and individuals providing contracted services.

(e) Contract providers of direct patient care shall document services on the day of care, and shall submit, every two weeks at a minimum, records of all services provided within that timeframe.

*History Note:    Authority G.S. 131E-202;  
                      Eff. November 1, 1984;  
                      Amended Eff. February 1, 1996; November 1, 1989.*

**SECTION .0600 - PATIENT/FAMILY CARE**

**10A NCAC 13K .0601    ACCEPTANCE OF PATIENTS FOR HOSPICE SERVICES**

A hospice shall implement and follow written policies governing the acceptance of patients which include at the minimum:

- (1) Involvement of the interdisciplinary care team in making decisions regarding acceptance of patients and families and the designation of a primary caregiver.

- (2) Initial assessment of the patient prior to acceptance to ensure that its resources are sufficient to meet the needs of the patient and family.
- (3) Provision for a determination by the patient's physician that hospice care is appropriate and agreement to continue as the attending physician while the patient receives hospice services. All care and services provided shall be in accordance with the attending physician's written orders and the plan of care. Physician's orders shall be reviewed and signed by the physician at least every 90 days.
- (4) Informed consent signed by the patient thereby agreeing to hospice services being provided.
- (5) Advance notification of at least 48 hours to the patient or family when service provision is to be terminated, except in cases where the patient is in agreement with changes or there is a danger to a patient or staff member.
- (6) Each patient or family accepted for hospice care shall receive written information pertaining to services available, including the means for contacting "on-call" personnel when needed and other information as necessary.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; June 1, 1991; November 1, 1989.*

**10A NCAC 13K .0602 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0603 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0604 PATIENT'S RIGHTS AND RESPONSIBILITIES**

(a) A hospice agency shall provide each patient with a written notice of the patient's rights and responsibilities in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of services. The agency must maintain documentation showing that each patient has received a copy of his rights and responsibilities.

(b) The notice shall include at a minimum the patient's right to:

- (1) be informed and participate in the patient's plan of care;
- (2) voice grievances about the patient's care and not be subjected to discrimination or reprisal for doing so;
- (3) confidentiality of the patient's records;
- (4) be informed of the patient's liability for payment for services;
- (5) be informed of the process for acceptance and continuance of service and eligibility determination;
- (6) accept or refuse services;
- (7) be informed of the agency's on-call service;
- (8) be advised of the agency's procedures for discharge; and
- (9) be informed of supervisory accessibility and availability.

(c) A hospice agency shall provide all patients with a business hours telephone number for information, questions or complaints about services provided by the agency. The agency shall also provide the Division of Health Service Regulation's complaints number and the Department of Health and Human Services Careline number. The Division of Health Service Regulation shall investigate all allegations of non-compliance with the rules.

(d) A hospice agency shall initiate an investigation within 72-hours of complaints made by a patient or their family. Documentation of both the existence of the complaint and the resolution of the complaint shall be maintained by the agency.

*History Note: Authority G.S. 131E-202;  
Eff. February 1, 1996.*

**10A NCAC 13K .0605 HOME CARE**

If a hospice agency wishes to provide home care services as defined in G.S 131E-136 and meets the requirements of 10A NCAC 13J and the standards for the specific home care services applied for, the hospice agency may apply for a home care license. The licensure inspection shall be conducted either at the Department offices or on-site.

*History Note: Authority G.S. 131E-202;  
Eff. April 1, 1996.*

**SECTION .0700 - PATIENT/FAMILY CARE PLAN**



**10A NCAC 13K .0701 CARE PLAN**

(a) The hospice shall develop and implement policies and procedures which ensure that a written care plan is developed and maintained for each patient and family. The plan shall be established by the interdisciplinary care team in accordance with the orders of the attending physician and be based on the complete assessment of the patient's and family's medical, psychosocial and spiritual needs. The patient and family care coordinator shall have the primary responsibility for assuring the implementation of the patient's care plan. The plan shall include the following:

- (1) patient's diagnosis and prognosis;
- (2) identification of problems or needs and the establishment of appropriate goals;
- (3) types and frequency of services required to meet the goals; and
- (4) identification of personnel and disciplines responsible for each service.

(b) The care plan shall be reviewed by appropriate interdisciplinary care team members and updated at least once monthly. The interdisciplinary care team and other appropriate personnel shall meet at least once every two weeks for the purpose of care plan review and staff support. Minutes shall be kept of these meetings that include the date, names of those in attendance and the names of the patients discussed. Additionally, entries shall be recorded in the medical records of those patients whose care plans are reviewed.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; November 1, 1989.*

**10A NCAC 13K .0702 RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 13K .0703 RESERVED FOR FUTURE CODIFICATION**

**SECTION .0800 - PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS AND ADMINISTRATION**

**10A NCAC 13K .0801 PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS**

(a) The hospice shall develop and implement written policies and procedures for the administration of drugs and treatments including controlled substances.

(b) The original order for drugs and treatments shall be signed by the attending physician and incorporated in the patient's medical record. Signed faxed orders are acceptable. The receiver of faxed orders shall assure a hard copy is incorporated in the patient record. Thermal paper faxes are not acceptable.

(c) Verbal orders shall be given to a licensed nurse, physician or other person authorized by state law to implement orders, recorded and signed by the person receiving it and countersigned by the prescribing physician, or person authorized by the North Carolina Medical Board to sign for another physician. Care may commence with a verbal order documented in the patient record.

(d) Changes in drugs and treatments shall be signed by the physician and incorporated in the medical record within 30 days.

(e) Each patient's drug regimen shall be monitored to assure optimal symptom control in accordance with physician's orders. Individuals qualified to perform such reviews are registered nurses, pharmacists, licensed physicians, nurse practitioners, and physician's assistants approved to practice in North Carolina.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. April 1, 1996; November 1, 1989.*

**10A NCAC 13K .0802 ADMINISTRATION OF PHARMACEUTICALS**

(a) In a private home, the administration of prescribed medications is the primary responsibility of the patient, family member or caregiver. Where special skills or knowledge are required, medication shall be administered by a licensed registered nurse, licensed practical nurse with training specified by the North Carolina Board of Nursing, or physician.

(b) In a licensed hospice residence, medications shall be administered by a licensed nurse. Exceptions to this requirement are as follows:

- (1) persons who hold statutory authority to administer medications;
- (2) hospice patients, their families or caregivers who provide personal care to individuals whose health care needs are incidental to the personal care required;

- (3) administration of oral nutritional supplements;
  - (4) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present is carried out by a person licensed to make such assessments; and
  - (5) administration of commonly used cleansing enema solutions or suppositories with local effects only.
- (c) In a hospice inpatient unit or freestanding hospice inpatient facility, medications shall be administered by a licensed nurse, in accordance with the agency's, policies or in accordance with the contractual agreement between the hospice and the facility.
- (d) The administration of all medications must be documented in the patient's record by the licensed nurse, including those medications administered by the licensed nurse and those administered by the patient family or, caregiver, as ordered by the physician.
- (e) The provision of medications shall be specified in the agency's policies or in accordance with the contractual agreement between the hospice and the facility.
- (f) A hospice agency or facility shall develop and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.
- (g) Medications used in the home are the property of the patient and family and shall be appropriately stored. Hospice staff shall encourage disposal of unused or discontinued medications. Witnessed or reported disposal of medications shall be documented by hospice staff in the patient's record.
- (h) If the agency maintains an emergency drug kit, handling shall be in accordance with the North Carolina Board of Pharmacy 21 NCAC 46 .1400.

*History Note: Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; June 1, 1991.*

**10A NCAC 13K .0803 RESERVED FOR FUTURE CODIFICATION**

**SECTION .0900 - MEDICAL RECORDS**

**10A NCAC 13K .0901 CONTENT OF MEDICAL RECORD**

- (a) The hospice shall develop and implement policies and procedures to ensure that a medical record is maintained for each patient and is made available for licensure inspection. If the patient or responsible party wishes to deny the Department access to the medical record, that person shall sign a statement denying access. This statement shall be kept at the front of the record. If the patient is not able to approve or disapprove the release of such information for inspection, the patient's legal guardian shall make the decision and so indicate in writing.
- (b) The record shall contain past and current medical and social data and include the following information:
- (1) identification data (name, address, telephone, date of birth, sex, marital status);
  - (2) name of next of kin or legal guardian;
  - (3) names of other family members;
  - (4) religious preference and church affiliation and spiritual caregiver if appropriate;
  - (5) diagnosis, as determined by attending physician;
  - (6) authorization from attending physician for hospice care;
  - (7) source of referral;
  - (8) initial assessments, including physical, social, spiritual, environmental, and bereavement;
  - (9) consent for care form;
  - (10) physician's orders for drugs, treatments and other special care, diet, activity and other specific therapy services;
  - (11) care plan;
  - (12) clinical notes containing a record of all professional services provided directly or by contract with entries signed by the individual providing the services;
  - (13) nurse aide and hospice caregiver notes describing activities performed and pertinent observations;
  - (14) a copy of the signed patient's rights form or documentation of its delivery;
  - (15) patient family volunteer notes, as applicable, indicating type of contact, activities performed and time spent;
  - (16) discharge summary to include services provided, or reason for discharge if services are terminated prior to the death of the patient; and

- (17) bereavement counseling notes.

*History Note:* Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. April 1, 1996; February 1, 1995; November 1, 1989.

**10A NCAC 13K .0902 RECORD CONTENT, HANDLING AND RETENTION**

- (a) The hospice agency shall develop and implement written policies governing the content, handling and retention of patient records.
- (b) The agency shall maintain a patient record for each patient. Each page of the patient record shall have the patient's name. All entries in the record shall reflect the actual date of entry. Reference to any activity which occurred on a date prior to the date of entry shall be identified as a late or out of sequence entry. A system for maintaining originals and copies shall be described in the agency policies and procedures.
- (c) The agency shall assure that originals of patient records are kept confidential and secure on the licensed premises unless in accordance with Rule .0209 of this Subchapter, or subpoenaed by a court of legal jurisdiction, or to conduct an evaluation as required in Rule .1001 of this Subchapter.
- (d) If a record is removed to conduct an evaluation, the record shall be returned to the agency premises within five working days. The agency shall maintain a sign out log that includes to whom the record was released, patient's name and date removed.
- (e) A copy of the patient record for each patient must be readily available to the hospice staff providing services or managing the delivery of such services.
- (f) Patient records shall be retained for a period of not less than three years from the date of discharge of the patient, unless the patient is a minor in which case the record must be retained until five years after the patient's eighteenth birthday. If a minor patient dies, as opposed to being discharged for other reasons, the minor's records must be retained at least five years after the minor's death. When an agency ceases operation, the Department shall be notified in writing where the records will be stored for the required retention period.

*History Note:* Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996.

**SECTION .1000 - EVALUATION**

**10A NCAC 13K .1001 EVALUATION REQUIRED**

- (a) The hospice shall develop and implement policies and a written plan for the implementation of a comprehensive assessment at least annually of its overall program and performance. The quality and appropriateness of care provided shall be assessed with the findings used to verify policy implementation, to identify problems and to establish problem resolution and policy revision as necessary.
- (b) The hospice shall determine what individuals will carry out the evaluation. Representatives of the governing body, hospice staff, the interdisciplinary care team, and other appropriate professionals may be used.
- (c) The evaluation shall include, as a minimum, a review of all policies and procedures and a medical record review.
- (d) Documentation of the evaluation shall include the names and qualifications of the persons carrying out the evaluation, the criteria and methods used to accomplish it, and the action taken by the agency as a result of the findings.

*History Note:* Authority G.S. 131E-202;  
Eff. November 1, 1984;  
Amended Eff. February 1, 1996; November 1, 1989.

**10A NCAC 13K .1002 RESERVED FOR FUTURE CODIFICATION**

**SECTION .1100 - HOSPICE RESIDENTIAL CARE**

**10A NCAC 13K .1101 ADMINISTRATION**

- (a) Hospice residences must conform to the rules outlined in 10A NCAC 13K .0100 through .1000.
- (b) The hospice shall maintain administrative control of and responsibility for the provision of all services.

(c) The governing body shall have written policies and procedures governing the admission and delivery of all residential and inpatient hospice care services, including the management of medical and other emergencies.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1102 HOSPICE RESIDENCE STAFFING**

(a) There shall be trained hospice caregivers on duty 24 hours a day. A registered nurse shall be continuously available, for consultation and direct participation in nursing care. The registered nurse shall be on site when required to perform duties specified in the Nurse Practice Act. Supervision shall be provided by the Patient and Family Care Coordinator who may delegate this responsibility to the registered nurse on call.

(b) There shall be at least two staff on duty at all times.

(c) All staff, including patient family volunteers, counselors and clergy, shall complete training specific to dealing with the terminally ill and their families.

(d) Nurse aides employed to provide direct care shall be supervised by licensed nurses.

(e) Interdisciplinary team services shall be provided in accordance with the hospice plan of care.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991;  
Amended Eff. February 1, 1996; February 1, 1995.*

#### **10A NCAC 13K .1103 PHARMACEUTICAL SERVICES**

(a) The hospice shall establish and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(b) Pharmaceutical services shall be provided directly or through written agreement under the supervision of a licensed pharmacist and in accordance with Rule .0505 of this Subchapter. The pharmacist's duties shall include, but are not limited to the following:

- (1) advising the hospice and the hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal and record-keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;
- (2) inspecting all drug storage areas at least monthly;
- (3) conducting patients' drug regimen reviews frequently enough to monitor symptom control, no less often than monthly, with appropriate recommendations to the physician and hospice staff.

(c) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(d) Medications shall be labeled as described in the Pharmacy Laws of North Carolina.

(e) Medications must be stored in locked areas, at proper temperature, and accessible only to authorized persons in accordance with federal and state laws. Separately locked compartments must be provided for storage of controlled substances listed in the North Carolina Controlled Substances Act and other drugs subject to abuse.

(f) Controlled substances no longer needed by the patient are to be disposed of in compliance with the North Carolina Controlled Substances Act.

(g) The hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit as necessary, at least monthly, or more often if needed.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1104 DIETARY SERVICES**

(a) The hospice shall develop and maintain written policies and procedures for dietary services.

(b) Dietary services shall be provided directly or may be provided through written agreement with a food service company. The written agreement, if applicable, shall meet the provisions of Rule .0505 of this Subchapter.

(c) The hospice shall assure that residents' favorite foods are included in their diets whenever possible.

- (d) The food service shall be planned and staffed to serve three balanced meals at regular intervals or at a variety of times depending upon the needs of the residents. No more than 14 hours shall elapse between a substantial evening meal and breakfast.
- (e) The hospice shall appoint a staff member trained or experienced in food management to:
  - (1) plan menus to meet the nutritional needs of the residents.
  - (2) supervise meal preparation and service.
- (f) Therapeutic diets shall be prescribed by the physician and planned by a registered dietitian.
- (g) Between-meal snacks of nourishing quality shall be offered and be available on a 24 hour basis.
- (h) The procurement, storage and refrigeration of food, refuse handling and pest control shall comply with the most current sanitation rules promulgated by the Division of Environmental Health.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1105 HOSPICE VISITATION**

- (a) The hospice shall:
  - (1) provide areas that ensure privacy for visitation and at the time of death;
  - (2) arrange for family members to remain with the patient overnight.
- (b) Family and friends may visit at any hour. Children and pets shall not be excluded.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1106 INFECTION CONTROL**

- (a) The hospice shall develop and implement an infection control program which shall aim to protect the residents, family and personnel from hospice or community associated infections.
- (b) There shall be written policies and procedures governing the infection control program, developed by the hospice administrator and medical director and approved by the governing body.
- (c) Universal precautions, as specified by the Centers for Disease Control (CDC), shall be defined in writing and strictly followed.
- (d) All employees shall wear clean garments or protective clothing at all times and shall practice good personal hygiene and cleanliness.
- (e) A procedure shall be developed whereby the implementation of the infection control program is monitored on a monthly basis.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1107 HOUSEKEEPING AND LINENS**

- (a) Requirements for linens and personal care articles shall include:
  - (1) The use of common towels, washcloths, cups or any other personal care articles is prohibited.
  - (2) Each resident shall have a supply of towels, washcloths and soap.
  - (3) There shall be a supply of clean bed linens, towels, and washcloths.
  - (4) There shall be a separate closed area for storage of clean linen.
  - (5) Clean bed linens shall be changed as often as necessary, but no less than twice each week.
  - (6) Mattress pads and pillows shall be of washable material.
  - (7) There shall be separate storage for soiled linen and clothing. Such storage may consist of individual plastic bags or covered hampers or a soiled linen room. All personnel shall wash their hands thoroughly after handling soiled linen.
  - (8) Laundry equipment shall be maintained in the facility or arrangements made with a commercial laundry to handle soiled linen.
- (b) Housekeeping requirements are as follows:
  - (1) Housekeeping practices and procedures shall be employed to keep the home free from offensive odors, and accumulations of dirt, rubbish and dust.

- (2) Cleaning shall be performed in a manner to minimize the spread of pathogenic organisms. Floors shall be cleaned regularly. Polishes on floors shall provide a non-skid finish; throw or scatter rugs shall not be used except for non-skid entrance mats.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1108 REPORT OF DEATH**

The hospice shall have a written plan to be followed in case of patient death. The plan must provide for:

- (1) collection of data needed for the death certificate, as required by G.S. 130A-117;
- (2) recording time of death;
- (3) pronouncement of death;
- (4) notification of attending physician responsible for signing death certificate;
- (5) notification of next of kin or legal guardian;
- (6) authorization and release of body to funeral home; and
- (7) notification to the Department of any death resulting from an injury, accident, or other possible unnatural causes.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1109 RESIDENT CARE AREAS**

(a) Resident rooms shall meet the following requirements:

- (1) There shall be private or semiprivate rooms;
- (2) Infants and small children shall not be assigned to a room with an adult resident unless requested by residents and families;
- (3) Each resident room shall contain at least a bed, a mattress protected by waterproof material, mattress pad, pillow, and a chair;
- (4) Each resident room shall have a minimum of 48 cubic feet of closet space or wardrobe for clothing and personal belongings that provides security and privacy for each resident. Each resident room shall be equipped with a towel rack for each individual;
- (5) Each resident bedroom shall:
  - (A) be located at or above grade level;
  - (B) have provisions to ensure visual privacy for treatment or visiting;
- (6) Artificial lighting shall be provided sufficient for treatment and non-treatment needs, 50 foot candles for treatment, 35 foot candles for non-treatment areas; and
- (7) A room where access is through a bathroom, kitchen or another bedroom will not be approved for a resident's bedroom.

(b) Bathrooms shall meet the following requirements:

- (1) Bathroom facilities shall be conveniently accessible to resident rooms. One bathroom may serve up to four residents and staff. Minimum size of any bathroom shall be 18 square feet. The door shall be at least 32 inches wide.
- (2) The bathroom shall be furnished with the following:
  - (A) toilet with grab bars;
  - (B) lavatory with four inch wrist blade controls;
  - (C) mirror;
  - (D) soap, paper towel dispensers, and waste paper receptacle with a removable impervious liner;
  - (E) water closet; and
  - (F) tub or shower.

(c) Space shall be provided for:

- (1) charting, storage of supplies and personal effects of staff;
- (2) the storage of resident care equipment;
- (3) housekeeping equipment and cleaning supplies;
- (4) storage of test reagents and disinfectants distinct from medication;
- (5) locked medication storage and preparation; and

- (6) drugs requiring refrigeration. They may be stored in a separate locked box in the refrigerator or in a lockable drug-only refrigerator, capable of maintaining a temperature range of 36 degrees F (2 degrees C) to 46 degrees F (8 degrees C). The storage and accountability of controlled substances shall be in accordance with the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes.
- (d) Kitchen and dining areas shall have:
  - (1) a refrigerator;
  - (2) a cooking unit ventilated to the outside;
  - (3) a 42 inch minimum double-compartment sink and domestic dishwashing machine capable of sanitizing dishes with 160 degrees F. water;
  - (4) dining space of 20 square feet per resident; and
  - (5) storage space for non-perishables.
- (e) Other areas shall include:
  - (1) a minimum of 150 square feet exclusive of corridor traffic for recreational and social activities;
  - (2) an audible and accessible call system furnished in each resident's room and bathroom; and
  - (3) heating and air cooling equipment to maintain a comfort range between 68 degrees and 80 degrees Fahrenheit.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991;  
Amended Eff. February 1, 1995.*

#### **10A NCAC 13K .1110 FURNISHINGS**

Furnishings of the residence shall be home-like and non-institutional and include lounge furniture in addition to furnishings in resident rooms. Accessories such as wallpaper, bedspreads, carpets and lamps shall be selected to create such an atmosphere. Provision shall be made for each resident to bring items from home to place about the room to the extent available space allows.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1111 HOSPICE RESIDENCE ZONING AND FIRE SAFETY REQUIREMENTS**

Hospices maintained as residential facilities shall provide documentation of approval from local zoning commissions, fire departments and building departments.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1112 DESIGN AND CONSTRUCTION**

- (a) Hospice residences and inpatient units must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs.
- (b) Each facility shall be planned, constructed, and equipped to support the services to be offered in the facility.
- (c) Any existing building converted to a hospice facility shall meet all requirements of a new facility.
- (d) The sanitation, water supply, sewage disposal, and dietary facilities must comply with the rules of the Commission for Public Health.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1113 PLANS AND SPECIFICATIONS**

- (a) When construction or remodeling is planned, final working drawings and specifications must be submitted by the owner or the owner's appointed representative to the Department of Health and Human Services, Division of Health Service Regulation for review and approval. Schematic drawings and preliminary working drawings shall be submitted by the owner prior to the required submission of final working drawings. The Department shall forward copies of each submittal to the Department of Insurance and Division of Environmental Health for review and approval. Three copies of the plans shall be provided at each submittal.

- (b) Construction work shall not be commenced until written approval has been given by the Department. Approval of final plans and specifications shall expire one year from the date granted unless a contract for the construction has been signed prior to the expiration date.
- (c) If an approval expires, a renewed approval shall be issued provided revised plans meeting all current regulations, codes, and standards are submitted.
- (d) Completed construction shall conform to the minimum standards established in these Rules.
- (e) The owner or designated agent shall notify the Department when actual construction starts and at points when construction is 75 percent and 90 percent complete and upon final completion, so that periodic and final inspections can be performed.
- (f) The owner or owner's designated agent shall submit for approval by the Department all alterations or remodeling changes which affect the structural integrity of the building, functional operation, fire safety or which add beds or facilities over those for which the facility is licensed.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991;  
Amended Eff. February 1, 1996.*

**10A NCAC 13K .1114 PLUMBING**

- (a) The water supply shall be designed, constructed and protected so as to assure that a safe, potable and adequate water supply is available for domestic purposes in compliance with the North Carolina State Building Code.
- (b) All plumbing in the residence or unit shall be installed and maintained in accordance with the North Carolina State Plumbing Code. All plumbing shall be maintained in good repair and free of the possibility of backflow and backsiphonage, through the use of vacuum breakers and fixed air gaps, in accordance with state and local codes.
- (c) For homes with five or more residents, a 50-gallon quick recovery water heater is required. For homes with fewer than five residents, a 40-gallon quick recovery water heater is required.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1115 WASTE DISPOSAL**

- (a) Sewage shall be discharged into a public sewer system, or if such is not available, it shall be disposed of in a manner approved by the North Carolina Division of Environmental Health.
- (b) Garbage and rubbish shall be stored in impervious containers in such a manner as not to become a nuisance or a health hazard. A sufficient number of impervious containers with tight-fitting lids shall be provided and kept clean and in good repair. Refuse shall be removed from the outside storage at least once a week to a disposal site approved by the local health department.
- (c) The home or unit shall be maintained free of infestations of insects and rodents, and all openings to the outside shall be screened.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1116 APPLICATION OF PHYSICAL PLANT REQUIREMENTS**

The physical plan requirements for each hospice residential facility or unit shall be applied as follows:

- (1) New construction shall comply with the requirements of Section .1100 of this Subchapter;
- (2) Existing buildings shall meet licensure and code requirements in effect at the time of construction, alteration or modification;
- (3) New additions, alterations, modifications, and repairs shall meet the technical requirements of Section .1100 of this Subchapter; however, where strict conformance with current requirements would be impracticable, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Department's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Rule .1109 of this Section are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, may be



- approved by the authority having jurisdiction when the facility can effectively demonstrate to the Department's satisfaction that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules or codes have any conflict, the more stringent requirement shall apply.

*History Note:* Authority G.S. 131E-202;  
Eff. February 1, 1996.

## **SECTION .1200 - HOSPICE INPATIENT CARE**

### **10A NCAC 13K .1201 REQUIREMENTS FOR HOSPICE INPATIENT UNITS**

- (a) Hospice inpatient units must conform to the rules outlined in 10A NCAC 13K .0100 through .1100 and those in this Section.
- (b) Hospice inpatient units located in a licensed hospital shall meet the requirements of 10A NCAC 13B with the exception of: 10A NCAC 13B .1912, .1919, 1922 and .1923.
- (c) Hospice inpatient units located in a licensed nursing facility shall meet the requirements of 10A NCAC 13D with the exception of: 10A NCAC 13D .0507, .0600, .0800, .0907, .1004, .1200 and .1300.

*History Note:* Authority G.S. 131E-202;  
Eff. June 1, 1991.

### **10A NCAC 13K .1202 ADDITIONAL STAFFING REQUIREMENTS FOR HOSPICE INPATIENT UNITS**

- (a) All nursing services shall be provided under the supervision of a registered nurse.
- (b) A facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care. Each patient must receive all nursing services as prescribed by the physician and must be kept comfortable, clean, well-groomed and protected from accident, injury and infection. The presence of a Registered Nurse (RN) to provide direct care on all shifts is not required for patients receiving general inpatient care for respite unless specific nursing needs are in an individual patient's plan of care. If a patient in an inpatient facility is receiving general inpatient care for symptom management, then the 24-hour patient care RN staff must be available.
- (c) Considerations for determining sufficiency of nursing personnel include:
- (1) number of patients;
  - (2) specific patient care requirements;
  - (3) family care needs; and
  - (4) availability of support from other interdisciplinary team members.
- (d) Hospice caregivers shall only provide care to patients in licensed hospice residential beds in a combined hospice inpatient and residential facility.

*History Note:* Authority G.S. 131E-202;  
Eff. June 1, 1991;  
Amended Eff. January 1, 2010; February 1, 1996.

### **10A NCAC 13K .1203 ADDITIONAL SERVICES REQUIRED FOR HOSPICE INPATIENT CARE**

- (a) The hospice shall assure, directly or through written agreement, the provision of duly licensed radiology, laboratory, pathology and other medically related services in accordance with physicians' orders. Written agreement shall be in keeping with Rule .0505 of this Subchapter. If those services are provided directly, written policies and procedures shall govern their implementation.
- (b) Radiology, laboratory and pathology services shall be under the direction of a physician qualified by education, training and experience to assume that function.

*History Note:* Authority G.S. 131E-202;  
Eff. June 1, 1991.

### **10A NCAC 13K .1204 ADDITIONAL PATIENT CARE AREA REQUIREMENTS FOR HOSPICE INPATIENT UNITS**

- (a) The floor area of a single bedroom shall not be less than 100 square feet and the floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes.
- (b) The total space set aside for dining, recreation and other common uses shall not be less than 30 square feet per bed. Physical therapy and occupational therapy space shall not be included in this total.
- (c) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided for each 15 beds not individually served. There shall be a wheelchair and stretcher accessible central bathing area for staff to bathe a patient who cannot perform this activity independently. There shall be at least one such area per each level in a multi-level facility.
- (d) For each nursing unit or fraction thereof on each floor, the following shall be provided:
  - (1) an adequate medication preparation area with counter, sink with four-inch handles, medication refrigerator, eye-level medication storage, cabinet storage, and double-locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
  - (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
  - (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water closet with a suitable device for cleaning bedpans and a suitable means for washing and sanitizing bedpans and other utensils;
  - (4) a nurses' toilet and locker space for personal belongings;
  - (5) an audiovisual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
  - (6) a soiled linen storage area;
  - (7) a clean linen storage room area; and
  - (8) at least one janitor's closet.
- (e) Dietary and laundry each must have a janitor's closet.
- (f) Stretcher and wheelchair storage shall be provided.
- (g) Bulk storage shall be provided at the rate of five square feet of floor area per bed.
- (h) Office space shall be provided for persons with administrative responsibilities for the unit.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991;  
Amended Eff. February 1, 1996.*

**10A NCAC 13K .1205 FURNISHINGS FOR HOSPICE INPATIENT CARE**

- (a) Handgrips shall be provided for all toilet and bath facilities used by patients. Handrails shall be provided on both sides of all corridors used by patients.
- (b) For each nursing unit or fraction thereof on each floor, the following shall be provided:
  - (1) a nourishment station with work space, cabinet, and refrigerated storage, a small stove or hotplate in an area physically separated from the nurses' station; and
  - (2) one nurses' station consisting of adequate desk space for writing, storage space for office supplies and storage space for patients' records.
- (c) Flameproof privacy screens or curtains shall be provided in multi-bedded rooms.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1206 HOSPICE INPATIENT FIRE AND SAFETY REQUIREMENTS**

- (a) A new facility shall meet the requirements of the current North Carolina State Building Code and the following additional requirements:
  - (1) Where nursing units are located on the same floor with other departments or services, the facility shall be designed to provide separation from the other departments or services with a smoke barrier.
  - (2) Horizontal exits are not permitted in any new facility.
  - (3) An addition to an existing facility shall meet the same requirements as a new facility except that in no case shall more than one horizontal exit be used to replace a required exit to the outside. For all construction, an

emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.

- (b) The hospice shall establish written policies and procedures governing disaster preparedness and fire protection.
- (c) The hospice shall have an acceptable written plan periodically rehearsed with staff with procedures to be followed in the event of an internal or external disaster, and for the care of casualties of patients and personnel arising from such disasters.
- (d) The fire protection plan shall include:
  - (1) instruction for all personnel in use of alarms, fire fighting equipment, methods of fire containment, evacuation routes and procedures for calling the fire department and the assignment of specific tasks to all personnel in response to an alarm; and
  - (2) fire drills for each shift of personnel at least quarterly.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1207 HOSPICE INPATIENT REQUIREMENTS FOR HEATING/AIR CONDITIONING**

Heating and cooling systems shall meet the current American Society of Heating, Refrigeration, and Air Conditioning Engineers Guide and National Fire Protection Association Code 90A, which is hereby adopted by reference pursuant to G.S. 150B-14(c), with the following modification:

- (1) Soiled linen, bathrooms, janitor closets and soiled utility rooms must have negative pressure with relationship to adjacent areas.
- (2) Clean linen, clean utility and drug rooms must have positive pressure with relationship to adjacent areas.
- (3) All areas not covered in Paragraphs (1) and (2) of this Rule must have neutral pressure.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

#### **10A NCAC 13K .1208 HOSPICE INPATIENT REQUIREMENTS/EMERGENCY ELECTRICAL SERVICE**

Emergency electrical service shall be provided for use in the event of failure of the normal electrical service. This emergency service shall be made up as follows:

- (1) In any existing facility, the following must be provided:
  - (a) type 1 or 2 emergency lights as required by the North Carolina State Building Code;
  - (b) additional emergency lights for all nursing stations, drug preparation and storage areas, and for the telephone switchboard, if applicable;
  - (c) one or more portable battery-powered lamps at each nursing station; and
  - (d) a suitable source of emergency power for life-sustaining equipment to ensure continuous operation for a minimum of 72 hours.
- (2) Any addition to an existing facility shall meet the same requirements as new construction.
- (3) Any conversion of an existing building such as a hotel, motel, abandoned hospital or abandoned school, shall meet the same requirements for emergency electrical services as required for new construction.
- (4) Battery-powered corridor lights shall not replace the requirements for the emergency circuit nor be construed to substitute for the generator set. Sufficient fuel shall be stored for the operation of the emergency generator for a period not less than 72 hours, on a 24-hour per day operational basis. The system shall be test run for a period of not less than 15 minutes on a weekly schedule. Records of running time shall be maintained and kept available for reference.
- (5) To ensure proper evaluation of design of emergency power systems, the owner or operator shall submit with final working drawings and specifications a letter describing the policy for admissions and discharges to be used when the facility begins operations. If subsequent inspections for licensure indicate the admission policies have been changed, the facility will be required to take immediate steps to meet appropriate code requirements for continued licensure.
- (6) Lighting for emergency electrical services shall be provided in the following places:
  - (a) exit ways and all necessary ways of approach exits, including exit signs and exit direction signs, exterior of exits exit doorways, stairways, and corridors;
  - (b) dining and recreation rooms;
  - (c) nursing station and medication preparation area;
  - (d) generator set location, switch-gear location, and boiler room, if applicable; and

- (e) elevator, if required for emergency.
- (7) The following emergency equipment which is essential to life, safety, and the protection of important equipment or vital materials shall be provided:
  - (a) nurses' calling system;
  - (b) alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler systems if electrically operated, fire detecting and smoke detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;
  - (c) fire pump, if installed;
  - (d) sewerage or sump lift pump, if installed;
  - (e) one elevator, where elevators are used for vertical transportation of patients;
  - (f) equipment such as burners and pumps necessary for auxiliaries and controls, required for heating and sterilization, if installed; and
  - (g) equipment necessary for maintaining telephone service.
- (8) Where electricity is the only source of power normally used for space heating, the emergency service shall be provided for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the facility is supplied by at least two separate generating sources, or a network distribution system with the feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption.
- (9) The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the ten second primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1209 HOSPICE INPATIENT REQUIREMENTS FOR GENERAL ELECTRICAL**

- (a) All main water supply shut off valves in the sprinkler system must be electronically supervised so that if any valve is closed an alarm will sound at a continuously manned central station.
- (b) No two adjacent emergency lighting fixtures shall be on the same circuit.
- (c) Receptacles in bathrooms must have ground fault protection.
- (d) Each patient bed location must be provided with a minimum of four single or two duplex receptacles.
- (e) Each patient bed location must be supplied by at least two branch circuits.
- (f) The fire alarm system must be installed to transmit an alarm automatically to the fire department that is, legally committed to serve the area in which the facility is located, by the direct and reliable method approved by local ordinances.
- (g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1210 OTHER HOSPICE INPATIENT REQUIREMENTS**

- (a) In general patient areas, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' use at each patient toilet, bath, and shower room.
- (b) At least one telephone shall be available in each area to which patients are admitted and additional telephones or extensions as are necessary to ensure availability in case of need.

(c) General outdoor lighting shall be provided adequate to illuminate walkways and drive.

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1211 ADDITIONAL PLUMBING REQUIREMENTS/HOSPICE INPATIENT UNITS**

For inpatient units, the hot water system shall be adequate to provide:

	<u>Patient Areas</u>	<u>Dietary</u>	<u>Laundry</u>
Gallons per hour per bed	6 ½	4	4 1/2
Temperature degrees F.	110-116	140 (min)	140 (min)

*History Note: Authority G.S. 131E-202;  
Eff. June 1, 1991.*

**10A NCAC 13K .1212 APPLICATION OF PHYSICAL PLANT REQUIREMENTS**

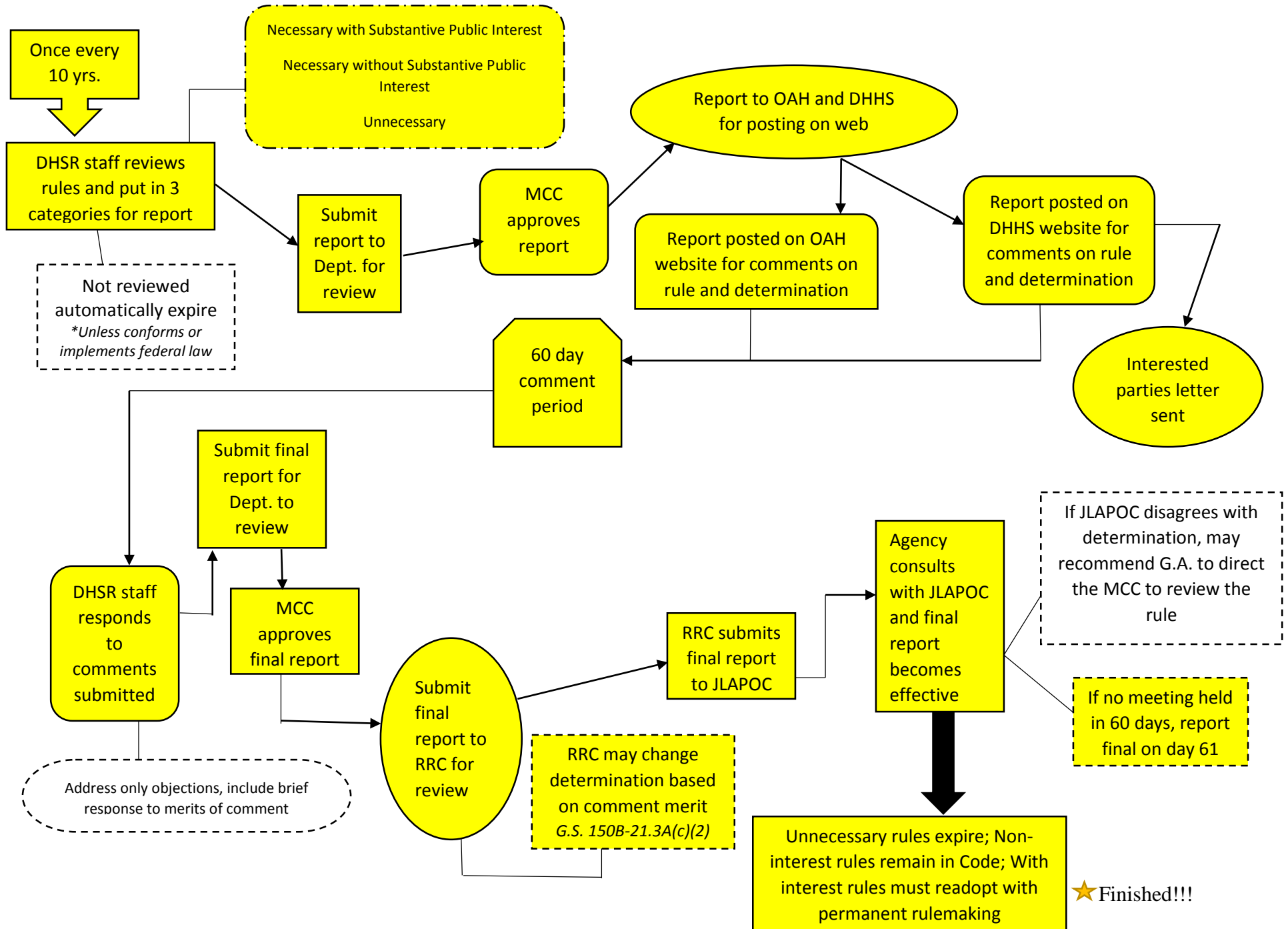
The physical plant requirements for each hospice inpatient facility or unit shall be applied as follows:

- (1) New construction shall comply with the requirements of Section .1200 of this Subchapter;
- (2) Existing buildings shall meet licensure and code requirements in effect at the time of construction, alteration or modification;
- (3) New additions, alterations, modifications, and repairs shall meet the technical requirements of Section .1100 of this Subchapter; however, where strict conformance with current requirements would be impracticable, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Department's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Rule .1210 of this Section are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, may be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Department's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules or codes have any conflict, the more stringent requirement shall apply.

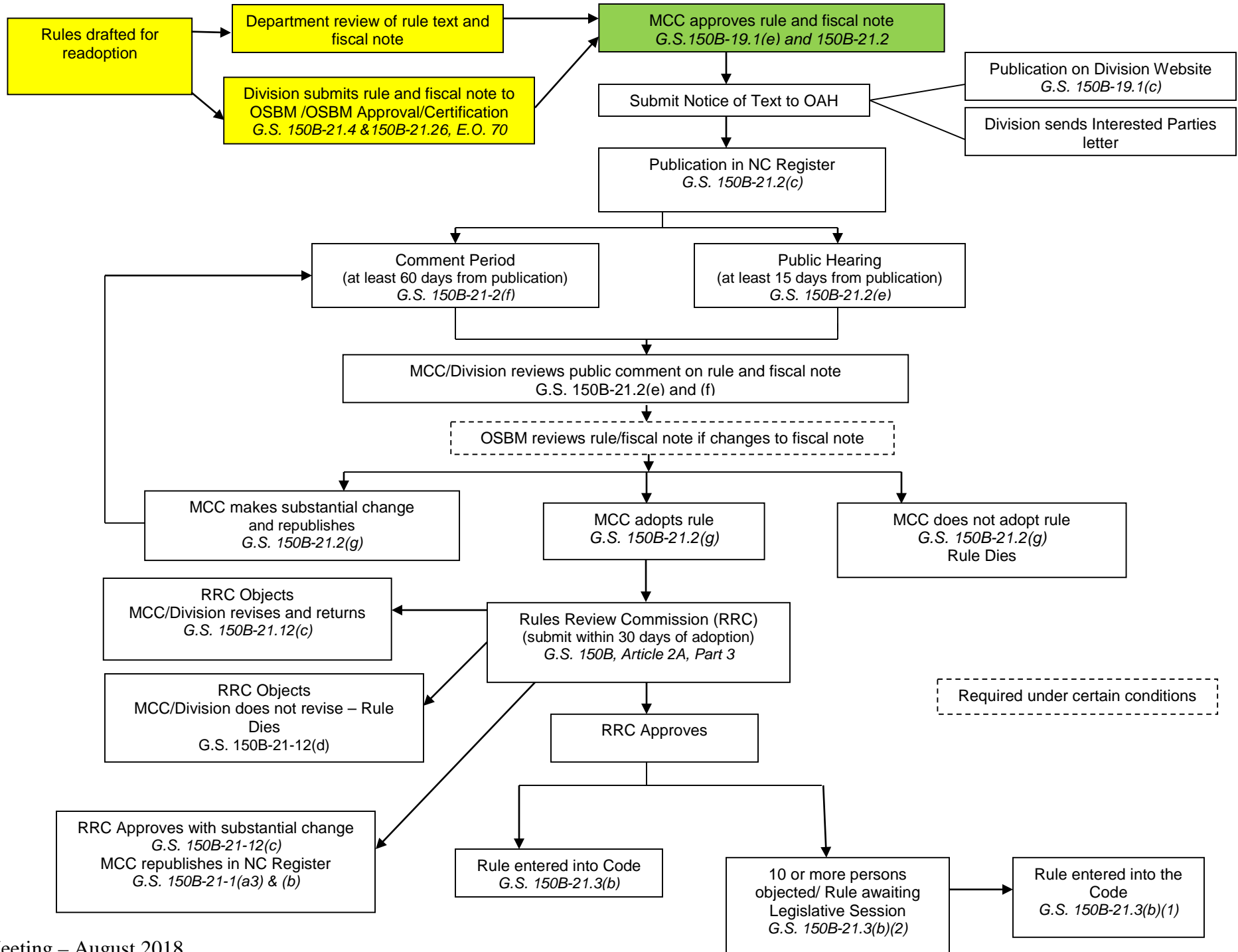
*History Note: Authority G.S. 131E-202;  
Eff. February 1, 1996.*

# Periodic Rules Review Process for: Hospital Rules - 10A NCAC 13B

Exhibit E



**Permanent Rulemaking Process for: Hospital Rules Readoptions – Construction – 10A NCAC 13B Exhibit E/1**



**MCC Action: Initiate Rulemaking**

1 10A NCAC 13B .3102 is proposed for readoption with substantive changes as follows:

2

3 **10A NCAC 13B .3102 PLAN APPROVAL**

4 (a) For the purposes of this Rule, the Guidelines for the Design and Construction of Hospitals and Outpatient Facilities  
5 that is incorporated by reference in Rule .6105 of this Subchapter shall be referred to as the “FGI Guidelines.”

6 (b) The definitions as set forth in Rule .6003 of this Subchapter shall apply to this Rule.

7 ~~(a) (c)~~ The facility design and construction shall be in accordance with the construction standards of the Division, the  
8 North Carolina Building Code, and local municipal codes. this Rule and the standards set forth in Sections .6000  
9 through .6200 of this Subchapter.

10 ~~(b) Submission of Plans:~~

11 ~~(1) Before construction is begun, color marked plans and specifications covering construction of the~~  
12 ~~new buildings, alterations or additions to existing buildings, or any change in facilities shall be~~  
13 ~~submitted to the Division for approval.~~

14 ~~(2) The Division shall review the plans and notify the licensee that said buildings, alterations, additions,~~  
15 ~~or changes are approved or disapproved. If plans are disapproved the Division shall give the~~  
16 ~~applicant notice of deficiencies identified by the Division.~~

17 ~~(3) In order to avoid unnecessary expense in changing final plans, as a preliminary step, proposed plans~~  
18 ~~in schematic form shall be submitted by the applicant to the Division for review.~~

19 ~~(4) The plans shall include a plot plan showing the size and shape of the entire site and the location of~~  
20 ~~all existing and proposed facilities.~~

21 ~~(5) Plans shall be submitted in triplicate in order that the Division may distribute a copy to the~~  
22 ~~Department of Insurance for review of North Carolina State Building Code requirements and to the~~  
23 ~~Department of Environment and Natural Resources for review under state sanitation requirements.~~

24 ~~(e) (d) Location:~~ The site where the facility is located shall:

25 ~~(1) The site for new construction or expansion shall be approved by the Division. Construction Section~~  
26 ~~prior to the construction of a new facility or the construction of an addition to an existing facility;~~

27 ~~(2) Hospitals shall be so located that they are free from noise from railroads, freight yards, main traffic~~  
28 ~~arteries, and schools and children's playgrounds. playgrounds; and~~

29 ~~(3) The site shall not be exposed to smoke, foul odors, or dust from industrial plants.~~

30 ~~(4) The area of the site shall be sufficient to permit future expansion and to provide parking facilities.~~

31 ~~(5) Available paved roads, water, sewage and power lines shall be taken into consideration in selecting~~  
32 ~~the site.~~

33 (e) Prior to the construction of a new facility or the construction of an addition or alteration to an existing facility, the  
34 governing body shall submit paper copies of the following to the Construction Section for review and approval:

35 (1) one set of schematic design drawings;

36 (2) one set of design development drawings; and

37 (3) one set of construction documents and specifications.



1 (f) If the North Carolina State Building Code Administrative Code and Policies requires the North Carolina  
2 Department of Insurance to review and approve the construction documents and specifications, the governing body  
3 shall submit a copy of the construction documents and specifications to the North Carolina Department of Insurance.

4 (g) The governing body shall submit a functional program that complies with Section 1.2-2 Functional Program of  
5 the FGI Guidelines with each submittal cited in Paragraph (e) of this Rule.

6 (h) The governing body shall:

7 (1) prepare any component of the safety risk assessment required by Section 1.2-3 Safety Risk  
8 Assessment of the FGI Guidelines; and

9 (2) submit any component of the safety risk assessment prepared to the Construction Section with each  
10 submittal cited in Paragraph (e) of this Rule.

11 (i) In order to maintain compliance with the standards established in this Rule and Sections .6000 through .6200 of  
12 this Subchapter, the governing body shall obtain written approval from the Construction Section for any changes made  
13 during the construction of the facility in the same manner as set forth in Paragraph (e) of this Rule.

14 (j) Two weeks prior to the anticipated construction completion date, the governing body shall notify the Construction  
15 Section of the anticipated construction completion date in writing either by U.S. Mail at the Division of Health Service  
16 Regulation, Construction Section, 2705 Mail Service Center, Raleigh, NC, 27699-2705 or by e-mail at  
17 DHSR.Construction.Admin@dhhs.nc.gov.

18 (k) Construction documents and building construction, including the operation of all building systems, shall be  
19 approved in writing by the Construction Section prior to licensure or patient occupancy.

20 (l) When the Construction Section approves the construction documents and specifications, they shall provide the  
21 governing body with an approval letter. The Construction Section's approval of the construction documents and  
22 specifications shall expire 12 months after the issuance of the approval letter, unless the governing body has obtained  
23 a building permit for construction. If the Construction Section's approval has expired, the governing body may obtain  
24 a renewed approval of the construction documents and specifications from the Construction Section as follows:

25 (1) If the standards established in this Rule and Sections .6000 through .6200 of this Subchapter have  
26 not changed, the governing body shall request a renewed approval of the construction documents  
27 and specifications from the Construction Section.

28 (2) If the standards established in this Rule and Sections .6000 through .6200 of this Subchapter have  
29 changed, the governing body shall:

30 (A) submit revised construction documents and specifications meeting the current standards  
31 established in this Rule and Sections .6000 through .6200 of this Subchapter to the  
32 Construction Section; and

33 (B) obtain written approval of the revised construction documents and specifications from the  
34 Construction Section.

35 ~~(d) (m) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding~~  
36 ~~Certificate of Need. A facility shall be licensed for no more beds than the number for which required physical space~~  
37 ~~and other required facilities are available. Neonatal Level II, III and IV beds are considered part of the licensed bed~~

1 ~~capacity. Level I bassinets are not considered part of the licensed bed capacity however, no more bassinets shall be~~  
2 ~~placed in service than the number for which required physical space and other required facilities are available.~~  
3 Bassinets in a Neonatal Level I nursery as specified in Rule .6228 of this Subchapter shall not be included in a facility's  
4 bed capacity; however, no more bassinets shall be placed in service than the number allowed by the requirements set  
5 forth in Rule .6228 of this Subchapter. Beds in Neonatal Level II, III, and IV nurseries as specified in Rule .6228 of  
6 this Subchapter shall be included in a facility's bed capacity.

7  
8 *History Note: Authority G.S. 131E-77; G.S. 131E-79;*  
9 *Eff. January 1, 1996;*  
10 *Temporary Amendment Eff. March 15, 2002;*  
11 *Amended Eff. April 1, ~~2003~~ 2003;*  
12 *Readopted Eff. April 1, 2019.*

**MCC Action: Initiate Rulemaking**

1 10A NCAC 13B .6101 is proposed for readoption with substantive changes as follows:

2

3

**SECTION .6100 – GENERAL REQUIREMENTS**

4

5 **10A NCAC 13B .6101 GENERAL LIST OF REFERENCED CODES, RULES, REGULATIONS, AND**  
6 **STANDARDS**

7 ~~The design, construction, maintenance and operation of a facility shall be in accordance with those codes and standards~~  
8 ~~listed in Rule .6102, LIST OF REFERENCED CODES AND STANDARDS of this Section, and codes, ordinances,~~  
9 ~~and regulations enforced by city, county, or other state jurisdictions with the following requirements:~~

10 (1) ~~Notify the Division when all construction or renovation has been completed, inspected and approved~~  
11 ~~by the architect and engineer having responsibility, and the facility is ready for a final inspection.~~  
12 ~~Prior to using the completed project, the facility shall receive from the Division written approval for~~  
13 ~~use. The approval shall be based on an on site inspection by the Division or by documentation as~~  
14 ~~may be required by the Division;~~

15 (2) ~~In the absence of any requirements by other authorities having jurisdiction, develop a master fire~~  
16 ~~and disaster plan with input from the local fire department and local emergency management agency~~  
17 ~~to fit the needs of the facility. The plan shall require:~~

18 (a) ~~Training of facility employees in the fire plan implementation, in the use of fire fighting~~  
19 ~~equipment, and in evacuation of patients and staff from areas in danger during an~~  
20 ~~emergency condition;~~

21 (b) ~~Conducting of quarterly fire drills on each shift;~~

22 (c) ~~A written record of each drill shall be on file at the facility for at least three years;~~

23 (d) ~~The testing and evaluation of the emergency electrical system(s) once each year by~~  
24 ~~simulating a utility power outage by opening of the main facility electrical breaker(s).~~  
25 ~~Documentation of the testing and results shall be completed at the time of the test and~~  
26 ~~retained by the facility for three years; and~~

27 (e) ~~Disaster planning to fit the specific needs of the facility's geographic location and disaster~~  
28 ~~history, with at least one documented disaster drill conducted each year.~~

29 For the purposes of the rules in this Subchapter, the following codes, rules, regulations, and standards are incorporated  
30 herein by reference including subsequent amendments and editions. Copies of these codes, rules, regulations, and  
31 standards may be obtained or accessed from the online addresses listed:

32 (1) the North Carolina State Building Codes with copies that may be purchased from the International  
33 Code Council online at <http://shop.iccsafe.org/> at a cost of five hundred seventy-one dollars  
34 (\$571.00) or accessed electronically free of charge at  
35 <http://codes.iccsafe.org/North%20Carolina.html>;

36 (2) 42 CFR Part 482.41, Condition of Participation: Physical Plant, that is incorporated herein by  
37 reference including all subsequent amendments and editions; however, Part 482.41(c)(1) shall not

1 be incorporated by reference. Copies of this regulation may be accessed free of charge at  
2 [https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-](https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-41.xml)  
3 [41.xml](https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-41.xml) or purchased online at [https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-](https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7)  
4 [federal-regulationspaper-201-7](https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7) for a cost of seventy-seven dollars (\$77.00);

5 (3) the following National Fire Protection Association standards, codes, and guidelines with copies of  
6 these standards, codes, and guidelines that may be accessed electronically free of charge at  
7 <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and->  
8 [Standards](https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-) or may be purchased online at <https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx>  
9 for the costs listed:

10 (a) NFPA 22, Standard for Water Tanks for Private Fire Protection for a cost of fifty-four  
11 dollars (\$54.00);

12 (b) NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-  
13 Enriched Atmospheres for a cost of fifty-three dollars (\$53.00);

14 (c) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas  
15 for a cost of fifty-four dollars \$54.00;

16 (d) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building  
17 Materials for a cost of forty-two dollars (\$42.00);

18 (e) NFPA 407, Standard for Aircraft Fuel Servicing for a cost of forty-nine dollars (\$49.00);

19 (f) NFPA 705, Recommended Practice for a Field Flame Test for Textiles and Films for a cost  
20 of forty-two dollars (\$42.00);

21 (g) NFPA 780, Standard for the Installation of Lightning Protection Systems for a cost of sixty-  
22 three dollars and fifty cents (\$63.50);

23 (h) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials for  
24 a cost of forty-nine dollars (\$49.00); and

25 (i) Fire Protection Guide to Hazardous Materials for a cost of one hundred and thirty-five  
26 dollars and twenty-five cents (\$135.25);

27 (4) 42 CFR Part 482.15 Condition of participation: Emergency preparedness with copies of this  
28 regulation that may be accessed free of charge at [https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-](https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml)  
29 [vol5/xml/CFR-2017-title42-vol5-sec482-15.xml](https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml) or purchased online at  
30 <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7>  
31 for a cost of seventy-seven dollars (\$77.00);

32 (5) the "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care Homes, and Other  
33 Institutions" 15A NCAC 18A .1300 with copies of these rules that may be accessed electronically  
34 free of charge at [http://reports.oah.state.nc.us/ncac/title%2015a%20-](http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20a/15a%20ncac%2018a%20.1301.pdf)  
35 [%20environmental%20quality/chapter%2018%20-](http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20a/15a%20ncac%2018a%20.1301.pdf)  
36 [%20environmental%20health/subchapter%20a/15a%20ncac%2018a%20.1301.pdf](http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20a/15a%20ncac%2018a%20.1301.pdf); and

1           (6)     the rules for ambulatory surgical facilities in 10A NCAC 13C, Licensing of Ambulatory Surgical  
2           Facilities with copies of these rules that may be accessed electronically free of charge at  
3           [http://reports.oah.state.nc.us/ncac/title%2010a%20-](http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20c/subchapter%20c%20rules.pdf)  
4           [%20health%20and%20human%20services/chapter%2013%20-](http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20c/subchapter%20c%20rules.pdf)  
5           [%20nc%20medical%20care%20commission/subchapter%20c/subchapter%20c%20rules.pdf](http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20c/subchapter%20c%20rules.pdf).

6  
7     *History Note:*     *Authority G.S. 131E-79;*  
8                         *Eff. January 1, ~~1996~~. 1996;*  
9                         *Readopted Eff. April 1, 2019.*

**MCC Action: Initiate Rulemaking**

1 10A NCAC 13B .6102 is proposed for readoption with substantive changes as follows:

2

3 **10A NCAC 13B .6102 ~~LIST OF REFERENCED CODES AND STANDARDS GENERAL~~**

4 ~~The following codes and standards are adopted by reference including subsequent amendments. Copies of these~~  
5 ~~publications can be obtained from the various organizations at the addresses listed:~~

6 (1) ~~The North Carolina State Building Code, current edition, all volumes including subsequent~~  
7 ~~amendments. Copies of this code may be purchased from the N.C. Department of Insurance~~  
8 ~~Engineering and Codes Division located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost~~  
9 ~~of two hundred fifty dollars (\$250.00).~~

10 (2) ~~The National Fire Protection Association codes and standards listed in this Paragraph, current~~  
11 ~~editions including subsequent amendments. Copies of these codes and standards may be obtained~~  
12 ~~from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA~~  
13 ~~02269 9101 at the cost shown for each code or standard listed.~~

14 (a) ~~10 Portable Fire Extinguishers (\$22.50)~~

15 (b) ~~12 Carbon Dioxide Extinguishing Systems (\$20.25)~~

16 (c) ~~12A Halon 1301 Fire Extinguishing Systems (\$22.25)~~

17 (d) ~~12B Halon 1211 Fire Extinguishing Systems (\$20.25)~~

18 (e) ~~13 Installation of Sprinkler Systems (\$28.50)~~

19 (f) ~~13D Installation of Sprinkler Systems in One and~~  
20 ~~Two Family Dwellings and Manufactured Homes (\$20.25)~~

21 (g) ~~13R Installation of Sprinkler Systems in Residential~~  
22 ~~Occupancies up to and including Four Stories~~  
23 ~~in Height (\$20.25)~~

24 (h) ~~14 Installation of Standpipe and Hose Systems (\$20.25)~~

25 (i) ~~15 Water Spray Fixed Systems (\$20.25)~~

26 (j) ~~17 Dry Chemical Extinguishing Systems (\$20.25)~~

27 (k) ~~17A Wet Chemical Extinguishing Systems (\$16.75)~~

28 (l) ~~20 Installation of Centrifugal Fire Pumps (\$20.25)~~

29 (m) ~~22 Water Tanks for Private Fire Protection (\$22.25)~~

30 (n) ~~25 Water Based Fire Protection Systems (\$22.25)~~

31 (o) ~~30 Flammable and Combustible Liquids Code (\$22.25)~~

32 (p) ~~31 Installation of Oil Burning Equipment (\$20.25)~~

33 (q) ~~37 Stationary Combustion Engines and Gas Turbines (\$16.75)~~

34 (r) ~~45 Fire Protection for Laboratories Using Chemicals (\$20.25)~~

35 (s) ~~49 Hazardous Chemicals Data (\$26.50)~~

36 (t) ~~50 Bulk Oxygen Systems at Consumer Sites (\$16.75)~~

37 (u) ~~53 Fire Hazards in Oxygen Enriched Atmospheres (\$22.50)~~

1	(v)	54	National Fuel Gas Code	(\$26.50)
2	(w)	55	Compressed and Liquefied Gases in Portable Cylinders	(\$16.75)
3	(x)	58	Storage and Handling of Liquefied Petroleum Gases	(\$26.50)
4	(y)	59A	Liquefied Natural Gas (LNG)	(\$20.25)
5	(z)	72	National Fire Alarm Code	(\$32.25)
6	(aa)	80	Fire Doors and Windows	(\$22.50)
7	(bb)	82	Incinerators, Waste and Linen Handling Systems	
8			and Equipment	(\$16.75)
9	(cc)	88A	Parking Structures	(\$16.75)
10	(dd)	90A	Installation of Air Conditioning and Ventilating Systems	(\$20.25)
11	(ee)	90B	Installation of Warm Air Heating and Air Conditioning	
12			Systems	(\$16.75)
13	(ff)	92A	Smoke Control Systems	(\$20.25)
14	(gg)	92B	Smoke Management Systems in Malls, Atria, Large Areas	(\$20.25)
15	(hh)	96	Ventilation Control and Fire Protection of Commercial	
16			Cooking Operations	(\$20.25)
17	(ii)	99	Health Care Facilities	(\$32.25)
18	(jj)	99B	Hypobaric Facilities	(\$20.25)
19	(kk)	101	Safety to Life from Fire in Buildings and Structures	(\$39.50)
20	(ll)	101M	Alternative Approaches to Life Safety	(\$22.25)
21	(mm)	105	Smoke Control Door Assemblies	(\$16.75)
22	(nn)	110	Emergency and Standby Power Systems	(\$20.25)
23	(oo)	111	Stored Electrical Energy Emergency and Standby	
24			Power Systems	(\$16.75)
25	(pp)	204M	Smoke and Heat Venting	(\$20.25)
26	(qq)	220	Types of Building Construction	(\$16.75)
27	(rr)	221	Fire Walls and Fire Barrier Walls	(\$16.75)
28	(ss)	241	Construction, Alteration, and Demolition Operations	(\$20.25)
29	(tt)	251	Fire Tests of Building Construction and Materials	(\$20.25)
30	(uu)	255	Test of Surface Burning Characteristics of Building	
31			Materials	(\$16.75)
32	(vv)	321	Basic Classification of Flammable and Combustible	
33			Liquids	(\$16.75)
34	(ww)	325	Fire Hazard Properties of Flammable Liquids, Gases,	
35			and Volatile Solids	(\$22.25)
36	(xx)	407	Aircraft Fuel Servicing	(\$20.25)
37	(yy)	418	Roof top Heliport Construction and Protection	(\$16.75)

1 ~~(zz) 704 Identification of the Fire Hazards of Materials (\$16.75)~~

2 ~~(aaa) 705 Field Flame Test for Textiles and Films (\$16.75)~~

3 ~~(bbb) 780 Lightning Protection Code (\$20.25)~~

4 ~~(ccc) 801 Facilities Handling Radioactive Materials (\$20.25)~~

5 ~~(3) American Society of Heating, Refrigerating & Air Conditioning Engineers Inc., (ASHRAE) HVAC~~  
6 ~~APPLICATIONS, current edition including subsequent amendments. Copies of this document may~~  
7 ~~be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers,~~  
8 ~~Inc. at 1791 Tullie Circle NE, Atlanta, GA 30329 at a cost of one hundred nineteen dollars (\$119.00).~~

9 ~~(4) Rules and Statutes Governing the Licensure of Ambulatory Surgical Facilities, current edition~~  
10 ~~including subsequent amendments. Copies of this document may be obtained from the N.C.~~  
11 ~~Department of Health and Human Services, Division of Health Service Regulation, Licensure and~~  
12 ~~Certification Section, 2711 Mail Service Center, Raleigh, NC 27699 2711 at a cost of three dollars~~  
13 ~~(\$3.00).~~

14 (a) A new facility or any addition or alteration to an existing facility whose construction documents were approved  
15 by the Construction Section on or after April 1, 2019 shall comply with the requirements provided in the codes,  
16 regulations, rules, and standards incorporated by reference in Items (1) through (3) of Rule .6101 of this Section. An  
17 existing facility whose construction documents were approved by the Construction Section prior to April 1, 2019 shall  
18 comply with the codes and standards incorporated by reference in Items (1) through (3) of this Rule that were in effect  
19 at the time construction documents were approved by the Construction Section.

20 (b) The facility shall develop and maintain an emergency preparedness program as required by 42 CFR Part 482.15  
21 Condition of Participation: Emergency Preparedness. The emergency preparedness program shall be developed with  
22 input from the local fire department and local emergency management agency. Documentation required to be  
23 maintained by 42 CFR Part 482.15 shall be maintained at the facility for at least three years and shall be made available  
24 to the Division during an inspection upon request.

25 (c) The facility shall comply with the "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care  
26 Homes, and Other Institutions," 15A NCAC 18A .1300 of the North Carolina Division of Public Health,  
27 Environmental Health Services Section.

28  
29 *History Note: Authority G.S. 131E-79;*  
30 *Eff. January 1, 1996; 1996;*  
31 *Readopted Eff. April 1, 2019.*



**MCC Action: Initiate Rulemaking**

1 10A NCAC 13B .6103 is proposed for readoption with substantive changes as follows:

2

3 **10A NCAC 13B .6103 APPLICATION OF PHYSICAL PLANT REQUIREMENTS EQUIVALENCY AND**  
4 **CONFLICTS WITH REQUIREMENTS**

5 The physical plant requirements for each facility shall be applied as follows:

6 (1) ~~\_\_\_\_\_ New construction shall comply with the requirements of Section .6000 of this Subchapter;~~

7 (2) ~~\_\_\_\_\_ Existing buildings shall meet licensure and code requirements in effect at the time of construction,~~  
8 ~~alteration, or modification;~~

9 (3) ~~\_\_\_\_\_ New additions, alterations, modifications, and repairs shall meet the technical requirements of~~  
10 ~~Section .6000 of this Subchapter, however, where strict conformance with current requirements~~  
11 ~~would be impractical, the authority having jurisdiction may approve alternative measures where the~~  
12 ~~facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the~~  
13 ~~safety or operating effectiveness of the facility;~~

14 (4) ~~\_\_\_\_\_ Rules contained in Section .6000 of this Subchapter are minimum requirements and not intended to~~  
15 ~~prohibit buildings, systems or operational conditions that exceed minimum requirements;~~

16 (5) ~~\_\_\_\_\_ Equivalency: Alternate methods, procedures, design criteria, and functional variations from the~~  
17 ~~physical plant requirements, because of extraordinary circumstances, new programs, or unusual~~  
18 ~~conditions, may be approved by the authority having jurisdiction when the facility can effectively~~  
19 ~~demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met~~  
20 ~~and that the variation does not reduce the safety or operational effectiveness of the facility; and~~

21 (6) ~~\_\_\_\_\_ Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.~~

22 (a) The Division may grant an equivalency to allow an alternate design or functional variation from the requirements  
23 in Rule .3102 and the Rules contained in Sections .6000 through .6200 of this Subchapter. The equivalency may be  
24 granted by the Division if a governing body submits a written equivalency request to the Division that indicates the  
25 following:

26 (1) \_\_\_\_\_ the rule citation and the rule requirement that will not be met;

27 (2) \_\_\_\_\_ the justification for the equivalency;

28 (3) \_\_\_\_\_ how the proposed equivalency meets the intent of the corresponding rule requirement; and

29 (4) \_\_\_\_\_ a statement by the governing body that the equivalency request will not reduce the safety and  
30 operational effectiveness of the facility design and layout.

31 The governing body shall maintain a copy of the approved equivalence issued by the Division.

32 (b) If the rules, codes, or standards contained in this Subchapter conflict, the most restrictive requirement shall apply.

33

34 *History Note: Authority G.S. 131E-79;*  
35 *Eff. January 1, 1996. 1996;*  
36 *Readopted Eff. April 1, 2019.*

**MCC Action: Initiate Rulemaking**

1 10A NCAC 13B .6207 is proposed for readoption with substantive changes as follows:

2

3 **10A NCAC 13B .6207 OUTPATIENT SURGICAL FACILITIES**

4 (a) ~~When~~ If a facility elects to share outpatient surgical facilities with inpatient surgical facilities, the outpatient  
5 operating room and support areas shall meet the ~~same physical plant~~ requirements as ~~inpatient, general operating~~  
6 ~~rooms and support areas~~, set forth in Sections .6000 through .6200 of this Subchapter.

7 (b) ~~When~~ If a facility elects to provide separate, non-sharable outpatient surgical facilities, the operating rooms and  
8 support areas shall meet the ~~physical plant construction~~ requirements of ~~Outpatient Surgical Licensure~~ requirements  
9 set forth in Section .1400 of 10A NCAC 13C .1400. 13C.

10

11 *History Note: Authority G.S. 131E-79;*  
12 *Eff. January 1, ~~1996~~. 1996;*  
13 *Readopted Eff. April 1, 2019.*

**Fiscal Impact Analysis of  
Permanent Rule Readoption without Substantial Economic Impact**

**Agency Proposing Rule Change**

North Carolina Medical Care Commission

**Contact Persons**

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**Impact Summary**

State Government: Yes

Local Government: Yes

Private Sector Entities: Yes

Substantial Impact: Possible - Benefits Uncertain

**Titles of Rule Changes and North Carolina Administrative Code Citations**

Rule Readoptions (See proposed texts of these in Appendix 1):

.3102 Plan Approval

.6101 ~~General~~ List of Codes, Regulations, Rules, and Standards

.6102 ~~List of Referenced Code and Standards~~ General

.6103 ~~Application of Physical Plant Requirements~~ Equivalency and Conflicts with Requirements

.6227 Outpatient Surgical Facilities

**Authorizing Statutes**

G.S. 131E-77 and G.S. 131E-79

**Background**

Under authority of N.C.G.S. § 150B-21.3A, Periodic review and expiration of existing rules, the North Carolina Medical Care Commission and Rule Review Commission approved the subchapter report with classifications for the rules located at 10A NCAC 13B – Licensing of Hospitals – on February 10, 2017, and May 18, 2017, respectively. The report became final after submission to the Joint Legislative Administrative Procedure Oversight Committee on July 22, 2017.

The following rules were classified in the report as necessary with substantive public interest: .3102, .6101, .6102, .6103, and .6227. The Agency is presenting these 5 rules for readoption with substantive changes in this analysis.

The rule readoptions presented in this fiscal analysis were readopted to: coordinate these rules with Rule 10A NCAC 13B .6105 that incorporates by reference the “Guidelines for the Design

and Construction of Hospitals and Outpatient Facilities” (FGI Guidelines)<sup>1</sup>; update the rules to reflect current procedures of the Construction Section; remove ambiguity from the rules; and implement technical and formatting changes.

There are 120 licensed hospitals in the state. A majority of the hospitals in the state are owned by private sector entities. The remainder are either owned by a local government or the state. All these hospitals are also certified to receive Medicare reimbursement from the Centers for Medicare and Medicaid services (CMS). As a result, a hospital’s physical plant must meet state licensure requirements and CMS federal regulations. Hospital design and construction is funded from various sources that includes: state issued tax-exempt revenue bonds (NC Health Care Facilities Act); bank loans; federal government grants, federal, state and municipal bonds; operating funds; and private donations.

### **Rule Summary and Anticipated Fiscal Impact**

#### Baseline

The current requirements in Rules 10A NCAC 13B .3102, .6101, .6102, .6103, and .6207 form the basis of the regulatory baseline. For Rule .3102, a review of hospital plans submitted between the years 2015 to 2017 was used to assess current hospital plan submittals under the regulatory baseline. The hospital project drawing submittals in prior years were used to project the future impacts due to the changes proposed in Rule .3102.

#### Time Frame for Analysis

The readopted rules will go into effect on April 1, 2019. Except for Rule .3102, the cost impact for the proposed rules will start occurring in 2019 and continue in future years. For Paragraph (1) of 10A NCAC 13B .3102 (re-approval of non-complaint plans 12 months after original approval), the cost impact will start occurring in 2020 and will continue in future years. Additionally, the cost reduction in 10A NCAC 13B .6102 caused by the use of a future edition of the NFPA Standards 99 and 101 will start occurring in 2020. As a result, the time frame for the analysis will be two years (2019 and 2020).

#### Assumptions

- In future years, the number of schematic design drawings (SDs) and design development drawings (DDs) to be submitted per year for projects will be approximately equal to the average number of SDs and DDs submitted for the years between 2015 and 2017<sup>2</sup>. As indicated in Table 1, the average number of SDs and DDs submitted for these years is 10 drawings and 14 drawings, respectively.

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<sup>1</sup> Due to Session Law 2017-174, the Medical Care Commission was required to repeal existing physical plant rules and adopt rules that incorporated by reference the Facility Guidelines Institutes “Guidelines for the Design and Construction of Hospitals and Outpatient Facilities” (FGI Guidelines). The FGI Guidelines would replace the repealed physical plant rules. The rules that were adopted as result of this law were 10A NCAC 13B .6003, .6105, and .6228. The law also stipulated that a fiscal note was not required as part of the adoption process.

<sup>2</sup> The design of a project is broken up into different phases of design referred to as schematic design, design development and construction document. For the same set of plans, schematic design drawings, design development drawings and construction documents are drawings that are approximately 20% complete; 50% complete, 95 to 100% complete, respectively.

Table 1: CY 2015 to 2017 Project Submittals to Construction Section

Year	No. of projects submitted	Projects with only CDs submittal	Projects with only SDs and CDs submittals	Projects with SDs, DDs, and CDs submittals
2015	364	343	8	13
2016	348	323	9	16
2017	355	329	12	14
Average	356	332	10	14

- In future years, the total number of project drawing submittals each year will be approximately equal to the average number of project drawing submittals for the years 2015 to 2017, except that the projects with only a SD and construction documents (CDs) submittal will be counted as having three submittals instead of two. Using the information in Table 1, the total numbers of project submittals in future years is approximately 410 drawing submittals (332 + 24x3).
- The Construction Section can only approve an equivalency request to use a current edition of the NFPA Standards 99 and 101 for new hospitals or additions to existing hospital. As a result, the projected number of equivalency requests per year for the use of a current edition of the NFPA Standards 99 and 101 will be approximately equivalent to the average number of new hospitals and additions submitted each year for the years 2015 to 2017. The number of new hospitals and additions submitted in 2015, 2016, and 2017 was four, five, and five, respectively. In future years, the number of equivalency requests per year for use of a current edition of the NFPA Standards 99 and 101 will be approximately five.
- In prior years, equivalency requests have been submitted that used as their basis the FGI Guidelines. Because the FGI Guidelines was incorporated by reference in the 10A NCAC 13B Rules in December of 2017, these FGI Guidelines equivalency requests will not be submitted in future years. As a result, the total number of equivalency requests in future years will decrease. It is assumed that the decrease in future equivalency requests will be approximately equivalent to the average number of FGI Guidelines equivalency requests in prior years which was three (FGI Guidelines equivalency requests submitted in 2015, 2016, 2017 were three, two, and three, respectively).

**Construction Section Staff Costs**

- State Government is impacted by Construction Section personnel costs related to plan review and equivalency review and approval. Plan review work is completed by an engineer and architect. Equivalency review and approval is completed by an architect and the Construction Section Chief. Hourly rates for Construction Section personnel involved with this work were determined as follows. Based on the Midpoint salary, the hourly rate for an Engineering Director II (GN 23), an Engineer II (GN14) and an Architect II (GN16) including fringe

benefits is \$94 per hour, (194,965/2080), \$51 per hour (\$105,894/2080 hours) and \$59 per hour (\$122,539/2080 hours), respectively<sup>3</sup>.

- The benefits contribution for state government staff will stay in the range of 33% to 34% for the next three years.
- Wages have started to increase recently because of the economic recovery. However, due to the following factors wage growth was held constant in this analysis: the longer term economic forecast is uncertain; the time frame for the analysis is within a short time frame of two years; and the impacts associated with wages could not be quantified.

### **Architect hourly cost**

- State-owned, local government-owned, and private sector entity-owned hospitals will be impacted by the cost for their architects to prepare an equivalency. The hourly rate including fringe benefits for an architects in the private sector is equivalent to \$66 per hour.<sup>4</sup>

## **Cost and Benefit Estimates**

### **Rule 10A NCAC 13B .3102 Plan Approval**

#### **Purpose for rule changes**

The Agency is proposing to readopt this rule with substantive changes. This proposed rule provides the requirements for a governing body who is constructing or altering a hospital that includes drawing and document submittals; drawing review and approval; completed construction inspection; and approval of changes made during construction. Changes to the proposed Rule .3102 are listed below:

- Paragraphs (a) and (b) were added to this Rule. Paragraph (a) notifies the governing body that the “Guidelines for the Design and Construction of Hospital and Outpatient Facilities” will be referred to as the “FGI Guidelines” in this rule. Paragraph (b) states that the definition in Rule .6003 also apply to this rule. These changes coordinate this rule with the rules that incorporated by reference the FGI Guidelines (10A NCAC 13B .6003 and .6105).
- Paragraph (c) was the existing Paragraph (a) but technical changes were made to the proposed Paragraph (c). This proposed Paragraph (c) requires hospital design and construction to comply with specific physical plant rules and standards located at 10A NCAC 13B Sections .6000 through .6200 rather than “construction standards of the Division” as stated in the existing Paragraph (a).
- Paragraph (d) was the existing Paragraph (c) but technical changes and deletions were made to the proposed Paragraph (d). This Paragraph cites the requirements for the site selection of a hospital. Technical changes were made to this rule to clarify its meaning. Sub-paragraphs (4) and (5) were deleted because these requirements are cited in the FGI Guidelines and it would be redundant to cite these requirements again here.
- Paragraph (e) replaces the existing Paragraphs (b)(1), (3), and (5). The proposed Paragraph (e) had technical changes, deletions and additions. The proposed Paragraph (e):

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<sup>3</sup> This hourly rate includes the 2% salary increase for state employees that was enacted in Session Law 2018-5.

<sup>4</sup> Bureau of Labor Statistics, “Occupational Outlook Handbook: Architectural and Engineering Managers”, (April, 2018), Retrieved from <https://www.bls.gov/ooh/management/architectural-and-engineering-managers.htm>

- reworded the requirement for plans to be submitted by a technical change as follows: “Prior to the construction of a new facility or the construction of an addition or alteration of an existing facility”;
- added the requirement for the submittal of design development drawings (DDs). This change will decrease the number of deficiencies on the Construction Documents;
- relocated the requirements for schematic design drawings (SDs) and construction documents (CDs) submittal from the existing Paragraphs (b)(1) and (3) to the proposed Paragraph (e) (1) and (3).
- deleted the requirement in the existing Paragraph (b)(5) for a governing body to submit one copy of plans to the Construction Section for the Department of Environment and Natural Resources review. Many years ago, the responsibility for reviewing hospital plans was moved from the Department of Environment and Natural Resources to local health departments. Since that time, governing bodies have been submitting plans directly to local health department not to the Construction Section.
- Paragraph (f) changed the requirement found in the existing Paragraph (b)(5) for the governing body to submit one set of plans to the Construction Section for the North Carolina Department of Insurance (NCDOI) building code review. The proposed Paragraph (f) notifies a governing body to submit plans directly to the North Carolina Department of Insurance only if the North Carolina State Building Code: Administrative Code (Administrative Code) requires them to do so. Because the Administrative Code requires the governing body to submit plans directly to the NCDOI, governing bodies have been submitting plans directly to NCDOI not the Construction Section.
- Paragraph (g) added the requirement for a governing body to submit a copy of the FGI Guidelines functional program to the Construction Section with their SDs, DDs, and CDs. As per 10A NCAC 13B .6105, the governing body is required to comply with the FGI Guidelines and prepare a functional program. This paragraph requires that a governing body submits a copy of their functional program to the Construction Section at the time drawings are submitted. The Construction Section must have a copy of the functional program in order to do a review using the FGI Guidelines.
  - Paragraph (h) added the requirement for a governing body to submit a copy of the FGI Guidelines safety risk assessment to the Construction Section with their SDs, DDs, and CDs when the governing body is required to prepare a safety risk assessment by the FGI Guidelines. As per 10A NCAC 13B .6105, the governing body is required to comply with the FGI Guidelines and prepare a risk assessment for certain types of projects. The Construction Section must have a copy of the risk assessment in order to do a review using the FGI Guidelines.
  - Paragraph (i) added the requirement for a governing body to request approval from the Construction Section for changes made during construction that affects compliance with this Rule and the rules of Sections .6000 through .6200 of the Subchapter. This change may decrease the construction costs of a hospital. If a hospital’s construction does not comply with the physical plant rules, the hospital must modify the construction to bring it into compliance. Changes made after construction is complete can be costly.
  - Paragraph (j) modified and relocated the requirements of Rule .6101(1) to this Paragraph. The proposed Paragraph (j) requires the governing body to contact the Construction Section by mail or email and to request an inspection date at least two weeks prior to their inspection date. This helps the Construction Section staff avoid scheduling conflicts

with other inspection requests. This is already a current practice of the Construction Section.

- In Paragraph (k), the requirements for the Construction Section’s approval of “building construction and operation of all building systems” prior to patient occupancy was moved from the existing Rule .6101 Item (1) to this proposed paragraph. It is more appropriate to locate these requirements in this proposed Paragraph because they are related to the hospital’s design and construction.
- Paragraph (l) added the requirement for a governing body to receive renewed approval from the Construction Section for a project that has not had a building permit issued within 12 months of the Construction Section’s approval. This ensures that hospital construction complies with the most recent version of this Rule and the rules of Section .6000 through .6200 of this Subchapter.
- Paragraph (m) was the existing Paragraph (d) with technical changes and a deletion. A hospital’s “bed capacity” compliance with “G.S. 131E, Article 9” was deleted from this Paragraph because it is redundant to repeat the requirements of G.S. 131E, Article 9 in this Paragraph. The proposed Paragraph (m) notifies governing bodies that bassinets in a Neonatal Level I Nursery are not counted in the hospital’s bed capacity, but the beds in the Neonatal Level II, III and IV are counted in the capacity.

Impact:

State Government

Construction Section will be impacted by changes made to the following Paragraphs:

- Paragraph (e) requires the submittal of DDs in addition to SDs and CDs that are required by the existing Rule .3102. The cost impact would be due to the cost for the Construction Section to perform a review of the DDs and prepare a review letter. Under the current Rule .3102, the Construction Section many times only receives a CD submittal for projects. When this happens, the current practice of the Construction Section is not to require the submittal of SDs. This practice will be continued with the proposed language of Rule .3102. After the proposed rule is effective, if a governing body does submit SDs, the Construction Section will require the governing body to submit DDs. As a result, the number of projects that will require a DD plan review in future years will be approximately equivalent to the average number of projects with SD submittals in the years 2015 to 2017. As indicated in Table 1, there will be approximately 14 SD submittals in future years that will result in 14 DD reviews. The hourly rate for engineering and architectural plan review are \$51 per hour and \$59 per hour, respectively. The time to complete a review ranges from 8 hours for a small project to 40 hours for a large project. But because the type and size of the projects are unknown the number of hours to complete these reviews is unknown. Therefore, this cost is unquantifiable. The cost impact would start occurring in 2019 and would continue in future years.
- Paragraph (i) requires the Construction Section to review and approve changes made during construction. The Construction Section would be impacted by the cost to review revised drawings. The hourly rate for Construction Section architectural and engineering plan review is \$59 per hour and \$51 per hour, respectively. The time to complete a review of a change is approximately 2 hours. The number of revised drawings to be



submitted each year is unknown. As a result, this cost is unquantifiable. This cost would start occurring in 2019 and continue to future years.

- Paragraph (l) requires a governing body to receive renewed approval of a project if the project does not have a building permit within 12 months of the Construction Section's approval and the previously approved drawings no longer comply with the rules. In the past, renewed approval for projects was rarely needed because the physical plant rules that were originally adopted in 1996 have never been significantly amended until their repeal and replacement with the FGI Guidelines in 2017. Rule 10A NCAC 14J .6105 incorporates the FGI Guidelines by reference including future amendments and editions. Because the FGI Guidelines is published every four years, projects will need to comply with the most current edition of the FGI Guidelines so renewed approval of projects may be needed more often in the future. The Construction Section would be impacted by the cost to perform a plan review for renewed approval of a project. There is insufficient data of how many projects will need review based on this proposed requirements in future years. Additionally, the type and size of the projects is unknown. As a result, this cost is unquantifiable. The cost impact would start occurring in 2020 and would continue in future years.

#### State-owned Hospitals

The cost impact for state-owned hospitals is the same as the cost impact for private sector entities.

#### Local Government

The cost impact for the local government-owned hospital is the same as the cost impact for private sector entities.

#### Private Sector Entities

Private sector entities that own hospitals will be impacted by changes made to the following Paragraphs:

- Paragraph (e) requires a governing body to submit DDs in addition to SD and CDs. Private sector entities would be impacted by the cost to make copies of the DDs and to mail the copies to the Construction Section. Private sector entities would not be impacted by the cost to prepare DDs. DDs, which are 50% complete drawings, must be completed prior to completing CDs, which are 95% complete drawings. There will be approximately 14 SD submittals in future years (Table 1) that will result in 14 DD projects being copied and mailed to the Construction Section. Because the size and weight of the drawings are unknown this cost is unquantifiable. This impact would start occurring in 2019 and would continue in future years.
- Paragraph (g) requires a governing body to submit a copy of the FGI Guidelines functional program to the Construction Section. The functional program is required to be submitted with each SD, DD and CD submittal so there will be no additional postage cost. From page 3, the approximate number of drawing project submittals in future years is expected to be 410. The impact to governing bodies for this requirements is the cost to copy 410 functional programs. Because the number of pages to be copied for each functional program is unknown, this cost is unquantifiable. This cost would occur in 2019 and future years.

- Paragraph (h) requires a governing body to provide copies of the FGI Guidelines safety risk assessment to the Construction Section. According to the FGI Guidelines, not all projects will require the preparation of a safety risk assessment. If a safety risk assessment is required, it must be submitted with each SD, DD and CD submittal so there will be no additional postage cost. Because the number of risk assessment that will be prepared is unknown and the pages to be copied in each risk assessment is unknown, this cost is unquantifiable. This cost would occur in 2019 and future years.
- Paragraph (i) requires a governing body to submit changes made during construction of the hospital to the Construction Section for approval. The governing body would be impacted by the cost to submit copies of a revised drawing to the Construction Section. The number of drawings to be submitted each year is unknown. As a result, this cost cannot be quantified. This cost would start occurring in 2019 and future years.
- This cost would occur in 2019 and future years.
- Paragraph (l) requires a governing body to receive renewed approval of a project if the project does not have a building permit within 12 months of Construction Section's approval and the previously approved drawings no longer comply with the rules. The governing body would be impacted by the cost to revise and resubmit drawings to the Construction Section. Because the number of revised submittals is unknown this cost is unquantifiable. The cost impact would start occurring in 2020 and would continue in future years.

Benefits:

State Government

If DDs are submitted prior to CDs as required by Paragraph (e), state government may benefit from a decrease in time spent reviewing CDs because of fewer deficiencies on the CDs. More deficiencies may be caught on the DD review and corrected by the governing body's architect and engineer prior to the submittal of CDs.

State-owned Hospitals, the Local Government-owned Hospital and Private Sector entity-owned Hospitals

If DDs are submitted prior to CDs as required by Paragraph (e), the entities listed above may benefit from receiving approval of their CDs in less time. This may result in the project being constructed at an earlier date.

The entities above may also benefit from Paragraph (l) which requires a Construction Section re-approval for CDs which are no longer compliant with the physical plant rules. This requirement may result in lower construction costs. Making changes to CDs is much less costly than making changes to the building after construction is complete.

Rule 10A NCAC 14J .6101 List of Referenced Codes, Rules and Regulations, and Standards

Purpose for rule changes

The Agency is proposing to readopt this rule with substantive changes. The existing rule provided general requirements for the design and construction of a hospital. These general

requirements were moved to Rule .6102. The proposed rule incorporates by reference the codes, rules, regulations and standards that were previously incorporated by reference in the existing Rule .6102. This change was made because it is preferable to incorporate references to be cited by other rules of the Section at the beginning of the Section.

The requirements in the existing Item (1) of this Rule for a governing body to notify the Construction Section when construction is complete and to receive approval from the Construction Section prior to patient occupancy were moved to Rule .3102 Paragraphs (j) and (k).

The following standards no longer exist and were not moved to the proposed Rule .6101 from the existing Rule .6102:

- National Fire Protection Association (NFPA) Standards 12B, 50, and 321.

The following is a list of the other changes made to the proposed Rule .6101:

- In Item (1), the North Carolina State Building Code was incorporated by reference. It was incorporated by reference in the existing Rule .6102(1).
- In Item (2), 42 CFR Part 482.41 Condition of Participation: Physical Plant was incorporated by reference. This federal regulation incorporates by reference the 2012 edition of NFPA Standards 99 Health Care Facilities Code (NFPA 99) and 101 Life Safety Code (NFPA 101). This federal regulation was not incorporated by reference in the existing Rule .6102. Instead, the NFPA Standards 99 and 101 themselves were incorporated in the existing Rule .6102 Sub-Items (2)(ii) and (kk), respectively. By incorporating the federal regulation in the proposed rule instead of the NFPA standards themselves, the state rules become aligned with the federal regulations for Medicare reimbursement by the Center for Medicare and Medicaid Services (CMS). All hospitals in the state are certified to receive Medicare reimbursements from CMS. The following NFPA standards incorporated by reference in the existing Rule .6102 are not incorporated by reference in the proposed Rule .6101 because these standards are incorporated by reference within NFPA Standards 99 and 101: NFPA Standards 10, 12, 12A, 13, 13D, 13R, 14, 15, 17, 17A, 20, 25, 30, 31, 37, 45, 54, 55, 58, 72, 80, 82, 88A, 90A, 90B, 92A, 92B, 96, 99B, 101M, 105, 110, 111, 204, 220, 221, 241, 251, 418, and 704. The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) “HVAC Applications” that is incorporated by reference in the existing Rule .6102(3) is now the ASHRAE Standard 170 Ventilation of Health Care Facilities. This Standard is incorporated by reference within NFPA 99 and was not incorporated by reference in the proposed Rule .6101.
- In Item (3), the following NFPA Standards that were also incorporated by reference in the existing Rule .6102 are incorporated by reference in this Item: NFPA Standards 22, 53, 59A, 255, 407, 705, 780, and 801. NFPA Standards 49 and 325 that were incorporated by reference in the existing Rule .6102 are now contained in the NFPA Fire Protection Guide to Hazardous Materials. As a result, this Guide was incorporated by reference in this Item.
- In Item (4), 42 CFR Part 482.15 Condition of Participation: Emergency preparedness was incorporated by reference in this Rule but was not incorporated by reference in Rule

.6102. This is a new federal regulation that hospitals must comply with in order to receive Medicare reimbursement from CMS.

- In Item (5), the “Rules Governing the Sanitation of Hospitals, Nursing Home and Adult Care Homes” were incorporated by reference in the proposed Rule .6101 and were not incorporated by reference in the existing Rule .6102. These sanitation rules are incorporated by reference in the existing 10A NCAC 13B Rule .4703. But the Rule Review Commission prefers, where possible, to incorporate by reference codes, rules, regulations and standards in a Rule that is located close to the other rules citing compliance with those codes, rules, regulations and standards.
- In Item (6), the rules for the ambulatory surgical facilities in 10A NCAC 13C, Licensing were incorporated by reference. These rules were incorporated by reference in the existing Rule .6102(4).

Impact:

Because the codes, rules, regulations and standards cited in this rule may be accessed electronically free of charge, there is no fiscal impact associated with the re adoption of this rule.

Rule 10A NCAC 13B .6102 General

Purpose for rule change

The Agency is proposing to readopt this rule with changes. The proposed rule locates in one Rule the general requirements for the design and construction of a hospital that were previously located in the existing Rules .6101 and .3102. The existing Rule .6102 incorporated by reference the codes, rules, regulations and standards needed for the design and construction of a hospital. These references were updated and moved to the proposed Rule .6101. The following is a list of changes made to the proposed Rule .6102:

- Paragraph (a) requires a hospital or any addition or alteration to an existing hospital whose CDs were approved on or after April 1, 2019 to comply with the codes, regulations, rules, and standards incorporated by reference in the proposed Rule .6101(1) through (3). The proposed language of this Paragraph:
  - continues to require hospital design and construction to comply with the current edition of the North Carolina State Building Code and the National Fire Protection Association (NFPA) Standards cited in the proposed Rule .6101(3);
  - changes which edition of NFPA 101 and NFPA 99 hospital design and construction must comply with. The existing Rule .6101 requires compliance with the current edition of NFPA 101 and NFPA 99 and the proposed rule requires compliance with 42 CFR Part 482.41, which cites compliance with the 2012 editions of NFPA 101 and NFPA 99. This change aligns this rule with a federal regulation that all hospitals in the state must comply with in order to receive Medicare reimbursement from CMS. If a governing body wishes to use a current or future edition of NFPA 101 and NFPA 99 instead of the 2012 editions, they may do so by requesting an equivalency as per Rule .6103(a); and

- continues to require hospital design and construction with CDs approved by the Construction Section prior to April 1, 2019 to comply with the codes, regulations, rules, and standards incorporated by reference in the existing Rule .6102(1) through (3).
- Paragraph (b) requires hospitals to comply with 42 CFR Part 482.15 Condition of Participation: Emergency Preparedness, which has the requirements for a master fire and disaster plan. This master fire and disaster plan requirement was moved from the existing Rule .6101(2) to this Paragraph. It is a current practice of the state’s hospitals to use this federal regulation to prepare a master fire and disaster plan. This proposed Paragraph aligns a federal regulation and current practices of hospitals with state rules.
- Paragraph (c) requires hospitals to comply with the “Rules Governing the Sanitation of Hospitals, Nursing Homes, and Adult Care Homes, and Other Institutions”. This has been moved from existing Rule .3102 (b)(1).

Impact:

State Government

The proposed Paragraph (a) requires hospital design and construction to comply with the 2012 editions of NFPA Standards 99 and 101 and the specific editions of the NFPA standards incorporated by reference within the 2012 editions of NFPA Standards 99 and 101. All hospitals in the state are certified by CMS and since 2016 certified hospitals were required to comply with the 2012 editions of NFPA Standards 99 and 101. Even though the existing Rule required compliance with the current editions of the NFPA standards, the current practice of the Construction Section was to require compliance with the more stringent requirements of one of the following: the NCSBC and its referenced NFPA standards, the current editions of the NFPA standards or the 2012 editions of NFPA Standards 99 and 101 and their referenced standards.

Prior to July 2018, the 2012 NCSBC referenced older versions of the NFPA standards and controlled which editions of the NFPA standards a project must comply with. After July 2018, the 2018 NCSBC will go into effect and because it references more current editions of the NFPA standards than the 2012 editions of NFPA Standards 101 and 99, the 2012 editions of the NFPA Standards 101 and 99 and the other NFPA standards referenced within them will control which editions of the NFPA standards a project must comply with.

But the Construction Section will allow the design and construction of a new hospital or an addition to an existing hospital to comply with the current editions of the NFPA Standards as long as those NFPA standards are incorporated by reference in the current NCSBC and the governing body submits an equivalency request to do so. As a result the Construction Section will be impacted by the cost to review and approve an equivalency. This cost is provided under the impact for 10A NCAC 13B Rule .6103 Equivalency and Conflicts.

State-owned Hospitals

The cost impact for state-owned hospitals is the same as the cost impact for private sector entities.

### Local Government

The cost impact for the local government-owned hospital is the same as the cost impact for private sector entities.

### Private Sector Entities

The proposed Paragraph (a) requires a hospital's design and construction to comply with the 2012 editions of NFPA 99 and 101. There is no cost impact to the design and construction of a hospital for this change. After July 2018 and prior to the effective date of this Rule, the Construction Section will require a project to comply with the more stringent requirements of one of the following: the 2018 NCSBC; the 2012 editions of the NFPA Standards 99 and 101; or the current editions of NFPA Standards 99 and 101. Because the 2012 editions of NFPA Standards 99 and 101 are older, their requirements are probably more stringent and will control what a project must comply with. After the effective date of this Rule, the Construction Section will require a project to comply with the more stringent requirements of either the 2018 NCSBC or the 2012 editions of NFPA Standards 99 and 101. As cited above, the 2012 editions of NFPA Standards 99 and 101 are older and will have the more stringent requirements so the Construction Section will still require compliance with these standards.

. If a governing body requests an equivalency to use the current edition of NFPA 99 and 101, private sector entities will be impacted by the cost to pay an architect to prepare an equivalency. This cost is provided under the impact for 10A NCAC 13B .6103.

### Benefits

The local government-owned hospital, state-owned hospitals, and hospitals owned by private sector entities may benefit by receiving approval of an equivalency to use a more current edition of NFPA 101 and NFPA 99 (2015 or 2018 editions) instead of the 2012 edition. Use of a more current edition of NFPA Standards 99 and 101 are only allowed for the design and construction of either a new hospital or an addition to an existing hospital. In most cases future editions are less stringent than older editions, which may result in lower construction costs. As indicated in the assumptions, there are approximately five new hospital projects per year that are expected to be submitted in future years. The governing bodies for these projects could request equivalencies. Because the size and type of these hospital projects is unknown, the cost benefit cannot be quantified. This benefit would start occurring in 2020.

## Rule 10A NCAC 13B .6103 Equivalency and Conflicts of Interest

### Purpose for rule change

The Agency is proposing to readopt this rule with substantive changes. The existing rule provided the applicability of physical plant requirements for hospital construction and existing hospitals. The proposed rule deletes some of these requirements and moves them to 10A NCAC 13B .6105 in order to comply with SL 2017-174. The following Items were deleted from this rule:

- Item (1) sets forth the requirements for new hospital construction. This has been deleted from this rule and moved to 10A NCAC 13B .6105.
- Item (2) sets forth the requirements for existing buildings, which has been deleted and moved to 10A NCAC 13B .6105.

- Item (3) sets forth the requirements for the construction of hospital additions and renovations, which has been deleted and moved to 10A NCAC 13B .6105.
- Item (4) notifies facility owners that these rules are minimum requirements and can be exceeded when constructing a hospital. This Item is redundant and was deleted from this rule.

The following Items were relocated to Paragraph (a) and (b) of this rule as follows:

- Item (5), which has the requirements for an equivalency, was moved to a new Paragraph (a). Technical changes were made to the existing rule text.
- Item (6), which requires the most restrictive code or rules to apply when code or rule conflicts occur, was moved to Paragraph (b). Technical changes were made to the existing rule text.

Impact:

State Government

The proposed Paragraph (a) continues to require the Construction Section to review and approve acceptable equivalencies. As noted in the impact for Rule .6102, the Construction Section will be impacted by the cost to review and approve equivalencies for the use of the current editions of NFPA Standards 99 and 101. But the number of equivalencies submitted to the Construction Section will also decrease each year due to the adoption of the FGI Guidelines in Rule 10A NCAC 13B .6105. Prior to the adoption of the FGI Guidelines, hospitals requested equivalencies that used the FGI Guidelines as their basis for the equivalency. These FGI equivalency requests are no longer being submitted.

As indicated in the assumptions, the number of equivalency requests per year in future years for use of a current edition of NFPA Standards 99 and 101 is projected to be approximately five. The assumptions also indicated that the future equivalency requests will be decreased by three due to the adoption of the FGI Guidelines. The net number of equivalencies to be submitted per year in future years is approximately two. Because the size and type of new hospitals or additions is unknown, the cost for equivalency approval cannot be quantified. But the cost impact to the Construction Section for approving one equivalency will range from approximately \$271 (1 hour x \$94 for the Section Chief + 3 hours x \$59 for a plan review architect) to \$390 (1 hour x \$94 for the Section Chief + 5 hours x \$59 for a plan review architect). This cost impact would start occurring in 2019.

State-owned Hospitals

The cost impact for state-owned hospitals is the same as the cost impact for private sector entities.

Local Government

The cost impact for the local government-owned hospital is the same as the cost impact for private sector entities.

Private Sector Entities

Private sector entities will also be impacted by the cost to prepare and submit an equivalency for use of a current edition of NFPA Standards 99 and 101. But, as indicated above, private

sector entities will only be impacted by the net number of equivalencies to be submitted per year in future years, which is approximately two (equivalencies requesting use of current NFPA standards minus equivalencies using FGI Guidelines as their basis). Unfortunately, the size and type of new hospitals or additions is unknown so the cost for equivalency approval cannot be quantified. However, the cost impact to private sector entities for paying an architect to prepare an equivalency will range from approximately \$264 (4 hours x \$66 for a private sector architect) to \$540 (6 hours x \$66 for a private sector architect). This cost impact would start occurring in 2019.

### Rule 10A NCAC 13B .6207 Outpatient Surgical Facilities

#### Purpose for rule changes

The Agency is proposing to readopt this rule with substantive changes. Technical changes were made to the existing rule. This rule sets forth the physical plant requirements for: surgical facilities used to perform surgery on both inpatients and outpatients; and surgical facilities used to perform surgery on outpatients only.

#### Impact:

There is no fiscal impact associated with the readoption of this rule

### **Analysis: Summary**

#### **Benefits**

##### State

The DHSR Construction Section will benefit from the readoption of these rules. These benefits are unquantifiable. Requiring the submittal of DDs may decrease of the review time on DHSR Construction Section staff spend on the review of CDs.

##### State-owned Hospitals

The benefit for state-owned hospitals is the same as that for private sector entities listed below.

##### Local Government

The benefit for local government-owned hospitals is the same as that for private sector entities listed below.

##### Private Sector Entities

Private Sector Entities who own hospitals will benefit from the readoption of these rules. These benefits are unquantifiable but include:

- receiving approval of CDs in less time due to requiring the submittal of DDs;
- lower construction costs for a hospital because:
  - changes made during construction are submitted for Construction Section approval; and
  - approval of an equivalency allows the use of a less restrictive edition of the NFPA Standards 99 and 101.



## Impacts

As presented above, the estimated calendar year costs and benefits from the proposed rule readoptions are not expected to amount to an impact of \$1 million or more within a year. However, costs due to the readoption of two proposed rules (Rules .3102 and .6102) could not be quantified. Additionally, the benefit or reductions in construction costs due to Rule .6102 could not be quantified but may be significant. Therefore, there may be a possible substantial economic impact as a result of the readoption of these rules.

### State

For the DHSR Construction Section, the proposed readoption of these rules will result in a non-substantial impact due to: updating the list of referenced codes, rules, regulations and standards (Rule .6101); updating the rule language for equivalencies (Rule .6103); and making technical changes to the physical plant requirements for surgical facilities in a hospital (Rule .6227).

The following impacts were unquantifiable due to insufficient data for costs associated with:

- the Construction Section review of DDs;
- the Construction Section review of revised drawings submitted after a hospital is in construction;
- the Construction Section re-approval of older non-compliant CDs because a building permit was not issued within 12 months of Construction's original approval; and
- the Construction Section approval of an equivalency that allows a governing body to use the current editions of the NFPA 99 and 101 Standards in the construction of a hospital (Rule .6102).

Even though costs are unquantifiable for two rules (Rules .3102 and .6102), it is expected that any additional costs for these rules can be absorbed within the Construction Section and Department's operating budget without any increase to state funds. The greatest impact will be due to the requirement to submit DDs for review in future years. It has been projected that 14 DDs will be submitted per year in future years. This is actually a small percentage of the 356 plans projected to be submitted for review in future years.

### State-owned Hospitals

A summary of cost impacts for state-owned hospitals is the same as those for private sector entities listed below.

### Local Government

A summary of cost impacts for local government-owned hospitals is the same as those for private sector entities listed below.

### Private Sector Entities

The proposed readoption of these rules will result in a non-substantial impact for private sector entities for the same reasons noted above for the State.

The following impacts were unquantifiable due to insufficient data for:

- copying and mailing costs for DD submittals to the Construction Section because the size and weight of drawings is unknown;

- copying costs for functional programs and safety risk assessments because the number of pages to be copied is unknown;
- re-submittal costs for changes made during construction because the number of re-submittals is unknown;
- costs for receiving a renewed Construction Section approval for older non-compliant CDs because the number of submittal needing renewed approval is unknown; and
- costs for preparing an equivalency for use of more recent editions of NFPA Standards 99 and 101 because the number of future equivalency requests is unknown.

1 10A NCAC 13B .3102 is proposed for readoption with substantive changes as follows:

2  
3 **10A NCAC 13B .3102 PLAN APPROVAL**

4 (a) For the purposes of this Rule, the Guidelines for the Design and Construction of Hospitals and Outpatient Facilities  
5 that is incorporated by reference in Rule .6105 of this Subchapter shall be referred to as the “FGI Guidelines.”

6 (b) The definitions as set forth in Rule .6003 of this Subchapter shall apply to this Rule.

7 ~~(a) (c)~~ The facility design and construction shall be in accordance with the construction standards of the Division, the  
8 North Carolina Building Code, and local municipal codes. this Rule and the standards set forth in Sections .6000  
9 through .6200 of this Subchapter.

10 ~~(b) Submission of Plans:~~

11 ~~(1) Before construction is begun, color marked plans and specifications covering construction of the~~  
12 ~~new buildings, alterations or additions to existing buildings, or any change in facilities shall be~~  
13 ~~submitted to the Division for approval.~~

14 ~~(2) The Division shall review the plans and notify the licensee that said buildings, alterations, additions,~~  
15 ~~or changes are approved or disapproved. If plans are disapproved the Division shall give the~~  
16 ~~applicant notice of deficiencies identified by the Division.~~

17 ~~(3) In order to avoid unnecessary expense in changing final plans, as a preliminary step, proposed plans~~  
18 ~~in schematic form shall be submitted by the applicant to the Division for review.~~

19 ~~(4) The plans shall include a plot plan showing the size and shape of the entire site and the location of~~  
20 ~~all existing and proposed facilities.~~

21 ~~(5) Plans shall be submitted in triplicate in order that the Division may distribute a copy to the~~  
22 ~~Department of Insurance for review of North Carolina State Building Code requirements and to the~~  
23 ~~Department of Environment and Natural Resources for review under state sanitation requirements.~~

24 ~~(c) (d) Location:~~ The site where the facility is located shall:

25 ~~(1) The site for new construction or expansion shall be approved by the Division. Construction Section~~  
26 ~~prior to the construction of a new facility or the construction of an addition to an existing facility;~~

27 ~~(2) Hospitals shall be so located that they are free from noise from railroads, freight yards, main traffic~~  
28 ~~arteries, and schools and children's playgrounds. playgrounds; and~~

29 ~~(3) The site shall not be exposed to smoke, foul odors, or dust from industrial plants.~~

30 ~~(4) The area of the site shall be sufficient to permit future expansion and to provide parking facilities.~~

31 ~~(5) Available paved roads, water, sewage and power lines shall be taken into consideration in selecting~~  
32 ~~the site.~~

33 (e) Prior to the construction of a new facility or the construction of an addition or alteration to an existing facility, the  
34 governing body shall submit paper copies of the following to the Construction Section for review and approval:

35 (1) one set of schematic design drawings;

36 (2) one set of design development drawings; and

37 (3) one set of construction documents and specifications.

1 (f) If the North Carolina State Building Code Administrative Code and Policies requires the North Carolina  
 2 Department of Insurance to review and approve the construction documents and specifications, the governing body  
 3 shall submit a copy of the construction documents and specifications to the North Carolina Department of Insurance.

4 (g) The governing body shall submit a functional program that complies with Section 1.2-2 Functional Program of  
 5 the FGI Guidelines with each submittal cited in Paragraph (e) of this Rule.

6 (h) The governing body shall:

7 (1) prepare any component of the safety risk assessment required by Section 1.2-3 Safety Risk  
 8 Assessment of the FGI Guidelines; and

9 (2) submit any component of the safety risk assessment prepared to the Construction Section with each  
 10 submittal cited in Paragraph (e) of this Rule.

11 (i) In order to maintain compliance with the standards established in this Rule and Sections .6000 through .6200 of  
 12 this Subchapter, the governing body shall obtain written approval from the Construction Section for any changes made  
 13 during the construction of the facility in the same manner as set forth in Paragraph (e) of this Rule.

14 (j) Two weeks prior to the anticipated construction completion date, the governing body shall notify the Construction  
 15 Section of the anticipated construction completion date in writing either by U.S. Mail at the Division of Health Service  
 16 Regulation, Construction Section, 2705 Mail Service Center, Raleigh, NC, 27699-2705 or by e-mail at  
 17 DHSR.Construction.Admin@dhhs.nc.gov.

18 (k) Construction documents and building construction, including the operation of all building systems, shall be  
 19 approved in writing by the Construction Section prior to licensure or patient occupancy.

20 (l) When the Construction Section approves the construction documents and specifications, they shall provide the  
 21 governing body with an approval letter. The Construction Section's approval of the construction documents and  
 22 specifications shall expire 12 months after the issuance of the approval letter, unless the governing body has obtained  
 23 a building permit for construction. If the Construction Section's approval has expired, the governing body may obtain  
 24 a renewed approval of the construction documents and specifications from the Construction Section as follows:

25 (1) If the standards established in this Rule and Sections .6000 through .6200 of this Subchapter have  
 26 not changed, the governing body shall request a renewed approval of the construction documents  
 27 and specifications from the Construction Section.

28 (2) If the standards established in this Rule and Sections .6000 through .6200 of this Subchapter have  
 29 changed, the governing body shall:

30 (A) submit revised construction documents and specifications meeting the current standards  
 31 established in this Rule and Sections .6000 through .6200 of this Subchapter to the  
 32 Construction Section; and

33 (B) obtain written approval of the revised construction documents and specifications from the  
 34 Construction Section.

35 ~~(d) (m) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding~~  
 36 ~~Certificate of Need. A facility shall be licensed for no more beds than the number for which required physical space~~  
 37 ~~and other required facilities are available. Neonatal Level II, III and IV beds are considered part of the licensed bed~~

1 capacity. ~~Level I bassinets are not considered part of the licensed bed capacity however, no more bassinets shall be~~  
 2 ~~placed in service than the number for which required physical space and other required facilities are available.~~  
 3 Bassinets in a Neonatal Level I nursery as specified in Rule .6228 of this Subchapter shall not be included in a facility's  
 4 bed capacity; however, no more bassinets shall be placed in service than the number allowed by the requirements set  
 5 forth in Rule .6228 of this Subchapter. Beds in Neonatal Level II, III, and IV nurseries as specified in Rule .6228 of  
 6 this Subchapter shall be included in a facility's bed capacity.

7  
 8 *History Note:* Authority G.S. 131E-77; G.S. 131E-79;  
 9 Eff. January 1, 1996;  
 10 Temporary Amendment Eff. March 15, 2002;  
 11 Amended Eff. April 1, 2003- 2003;  
 12 Readopted Eff. April 1, 2019.

13 10A NCAC 13B .6101 is proposed for readoption with substantive changes as follows:

#### 14 15 SECTION .6100 – GENERAL REQUIREMENTS

#### 16 17 **10A NCAC 13B .6101 GENERAL LIST OF REFERENCED CODES, RULES, REGULATIONS, AND** 18 **STANDARDS**

19 ~~The design, construction, maintenance and operation of a facility shall be in accordance with those codes and standards~~  
 20 ~~listed in Rule .6102, LIST OF REFERENCED CODES AND STANDARDS of this Section, and codes, ordinances,~~  
 21 ~~and regulations enforced by city, county, or other state jurisdictions with the following requirements:~~

- 22 (1) ~~Notify the Division when all construction or renovation has been completed, inspected and approved~~  
 23 ~~by the architect and engineer having responsibility, and the facility is ready for a final inspection.~~  
 24 ~~Prior to using the completed project, the facility shall receive from the Division written approval for~~  
 25 ~~use. The approval shall be based on an on-site inspection by the Division or by documentation as~~  
 26 ~~may be required by the Division;~~
- 27 (2) ~~In the absence of any requirements by other authorities having jurisdiction, develop a master fire~~  
 28 ~~and disaster plan with input from the local fire department and local emergency management agency~~  
 29 ~~to fit the needs of the facility. The plan shall require:~~
- 30 (a) ~~Training of facility employees in the fire plan implementation, in the use of fire fighting~~  
 31 ~~equipment, and in evacuation of patients and staff from areas in danger during an~~  
 32 ~~emergency condition;~~
- 33 (b) ~~Conducting of quarterly fire drills on each shift;~~
- 34 (c) ~~A written record of each drill shall be on file at the facility for at least three years;~~
- 35 (d) ~~The testing and evaluation of the emergency electrical system(s) once each year by~~  
 36 ~~simulating a utility power outage by opening of the main facility electrical breaker(s).~~

~~Documentation of the testing and results shall be completed at the time of the test and retained by the facility for three years; and~~

~~(e) Disaster planning to fit the specific needs of the facility's geographic location and disaster history, with at least one documented disaster drill conducted each year.~~

For the purposes of the rules in this Subchapter, the following codes, rules, regulations, and standards are incorporated herein by reference including subsequent amendments and editions. Copies of these codes, rules, regulations, and standards may be obtained or accessed from the online addresses listed:

(1) the North Carolina State Building Codes with copies that may be purchased from the International Code Council online at <http://shop.iccsafe.org/> at a cost of five hundred seventy-one dollars (\$571.00) or accessed electronically free of charge at <http://codes.iccsafe.org/North%20Carolina.html>;

(2) 42 CFR Part 482.41, Condition of Participation: Physical Plant, that is incorporated herein by reference including all subsequent amendments and editions; however, Part 482.41(c)(1) shall not be incorporated by reference. Copies of this regulation may be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-41.xml> or purchased online at <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7> for a cost of seventy-seven dollars (\$77.00);

(3) the following National Fire Protection Association standards, codes, and guidelines with copies of these standards, codes, and guidelines that may be accessed electronically free of charge at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards> or may be purchased online at <https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx> for the costs listed:

(a) NFPA 22, Standard for Water Tanks for Private Fire Protection for a cost of fifty-four dollars (\$54.00);

(b) NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres for a cost of fifty-three dollars (\$53.00);

(c) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas for a cost of fifty-four dollars \$54.00;

(d) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials for a cost of forty-two dollars (\$42.00);

(e) NFPA 407, Standard for Aircraft Fuel Servicing for a cost of forty-nine dollars (\$49.00);

(f) NFPA 705, Recommended Practice for a Field Flame Test for Textiles and Films for a cost of forty-two dollars (\$42.00);

(g) NFPA 780, Standard for the Installation of Lightning Protection Systems for a cost of sixty-three dollars and fifty cents (\$63.50);

(h) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials for a cost of forty-nine dollars (\$49.00); and

(i) Fire Protection Guide to Hazardous Materials for a cost of one hundred and thirty-five dollars and twenty-five cents (\$135.25);

(4) 42 CFR Part 482.15 Condition of participation: Emergency preparedness with copies of this regulation that may be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml> or purchased online at <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7> for a cost of seventy-seven dollars (\$77.00);

(5) the "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care Homes, and Other Institutions" 15A NCAC 18A .1300 with copies of these rules that may be accessed electronically free of charge at <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2018%20-%20environmental%20health/subchapter%20a/15a%20ncac%2018a%20.1301.pdf>; and

(6) the rules for ambulatory surgical facilities in 10A NCAC 13C, Licensing of Ambulatory Surgical Facilities with copies of these rules that may be accessed electronically free of charge at <http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20c/subchapter%20c%20rules.pdf>.

*History Note: Authority G.S. 131E-79;  
Eff. January 1, 1996; 1996;  
Readopted Eff. April 1, 2019.*

10A NCAC 13B .6102 is proposed for readoption with substantive changes as follows:

**10A NCAC 13B .6102 ~~LIST OF REFERENCED CODES AND STANDARDS GENERAL~~**

~~The following codes and standards are adopted by reference including subsequent amendments. Copies of these publications can be obtained from the various organizations at the addresses listed:~~

~~(1) The North Carolina State Building Code, current edition, all volumes including subsequent amendments. Copies of this code may be purchased from the N.C. Department of Insurance Engineering and Codes Division located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost of two hundred fifty dollars (\$250.00).~~

~~(2) The National Fire Protection Association codes and standards listed in this Paragraph, current editions including subsequent amendments. Copies of these codes and standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269 9101 at the cost shown for each code or standard listed.~~

~~(a) 10 Portable Fire Extinguishers (\$22.50)~~

~~(b) 12 Carbon Dioxide Extinguishing Systems (\$20.25)~~

~~(c) 12A Halon 1301 Fire Extinguishing Systems (\$22.25)~~

1	(d)	12B	Halon 1211 Fire Extinguishing Systems	(\$20.25)
2	(e)	13	Installation of Sprinkler Systems	(\$28.50)
3	(f)	13D	Installation of Sprinkler Systems in One and	
4			Two Family Dwellings and Manufactured Homes	(\$20.25)
5	(g)	13R	Installation of Sprinkler Systems in Residential	
6			Occupancies up to and including Four Stories	
7			in Height	(\$20.25)
8	(h)	14	Installation of Standpipe and Hose Systems	(\$20.25)
9	(i)	15	Water Spray Fixed Systems	(\$20.25)
10	(j)	17	Dry Chemical Extinguishing Systems	(\$20.25)
11	(k)	17A	Wet Chemical Extinguishing Systems	(\$16.75)
12	(l)	20	Installation of Centrifugal Fire Pumps	(\$20.25)
13	(m)	22	Water Tanks for Private Fire Protection	(\$22.25)
14	(n)	25	Water Based Fire Protection Systems	(\$22.25)
15	(o)	30	Flammable and Combustible Liquids Code	(\$22.25)
16	(p)	31	Installation of Oil Burning Equipment	(\$20.25)
17	(q)	37	Stationary Combustion Engines and Gas Turbines	(\$16.75)
18	(r)	45	Fire Protection for Laboratories Using Chemicals	(\$20.25)
19	(s)	49	Hazardous Chemicals Data	(\$26.50)
20	(t)	50	Bulk Oxygen Systems at Consumer Sites	(\$16.75)
21	(u)	53	Fire Hazards in Oxygen Enriched Atmospheres	(\$22.50)
22	(v)	54	National Fuel Gas Code	(\$26.50)
23	(w)	55	Compressed and Liquefied Gases in Portable Cylinders	(\$16.75)
24	(x)	58	Storage and Handling of Liquefied Petroleum Gases	(\$26.50)
25	(y)	59A	Liquefied Natural Gas (LNG)	(\$20.25)
26	(z)	72	National Fire Alarm Code	(\$32.25)
27	(aa)	80	Fire Doors and Windows	(\$22.50)
28	(bb)	82	Incinerators, Waste and Linen Handling Systems	
29			and Equipment	(\$16.75)
30	(cc)	88A	Parking Structures	(\$16.75)
31	(dd)	90A	Installation of Air Conditioning and Ventilating Systems	(\$20.25)
32	(ee)	90B	Installation of Warm Air Heating and Air Conditioning	
33			Systems	(\$16.75)
34	(ff)	92A	Smoke Control Systems	(\$20.25)
35	(gg)	92B	Smoke Management Systems in Malls, Atria, Large Areas	(\$20.25)
36	(hh)	96	Ventilation Control and Fire Protection of Commercial	
37			Cooking Operations	(\$20.25)



1	(ii)	99	Health Care Facilities	(\$32.25)
2	(jj)	99B	Hypobaric Facilities	(\$20.25)
3	(kk)	101	Safety to Life from Fire in Buildings and Structures	(\$39.50)
4	(ll)	101M	Alternative Approaches to Life Safety	(\$22.25)
5	(mm)	105	Smoke Control Door Assemblies	(\$16.75)
6	(nn)	110	Emergency and Standby Power Systems	(\$20.25)
7	(oo)	111	Stored Electrical Energy Emergency and Standby	
8			Power Systems	(\$16.75)
9	(pp)	204M	Smoke and Heat Venting	(\$20.25)
10	(qq)	220	Types of Building Construction	(\$16.75)
11	(rr)	221	Fire Walls and Fire Barrier Walls	(\$16.75)
12	(ss)	241	Construction, Alteration, and Demolition Operations	(\$20.25)
13	(tt)	251	Fire Tests of Building Construction and Materials	(\$20.25)
14	(uu)	255	Test of Surface Burning Characteristics of Building	
15			Materials	(\$16.75)
16	(vv)	321	Basic Classification of Flammable and Combustible	
17			Liquids	(\$16.75)
18	(ww)	325	Fire Hazard Properties of Flammable Liquids, Gases,	
19			and Volatile Solids	(\$22.25)
20	(xx)	407	Aircraft Fuel Servicing	(\$20.25)
21	(yy)	418	Roof top Heliport Construction and Protection	(\$16.75)
22	(zz)	704	Identification of the Fire Hazards of Materials	(\$16.75)
23	(aaa)	705	Field Flame Test for Textiles and Films	(\$16.75)
24	(bbb)	780	Lightning Protection Code	(\$20.25)
25	(ccc)	801	Facilities Handling Radioactive Materials	(\$20.25)
26	(3)	American Society of Heating, Refrigerating & Air Conditioning Engineers Inc., (ASHRAE) HVAC		
27		APPLICATIONS, current edition including subsequent amendments. Copies of this document may		
28		be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers,		
29		Inc. at 1791 Tullie Circle NE, Atlanta, GA 30329 at a cost of one hundred nineteen dollars (\$119.00).		
30	(4)	Rules and Statutes Governing the Licensure of Ambulatory Surgical Facilities, current edition		
31		including subsequent amendments. Copies of this document may be obtained from the N.C.		
32		Department of Health and Human Services, Division of Health Service Regulation, Licensure and		
33		Certification Section, 2711 Mail Service Center, Raleigh, NC 27699 2711 at a cost of three dollars		
34		(\$3.00).		

(a) A new facility or any addition or alteration to an existing facility whose construction documents were approved by the Construction Section on or after April 1, 2019 shall comply with the requirements provided in the codes, regulations, rules, and standards incorporated by reference in Items (1) through (3) of Rule .6101 of this Section. An

1 existing facility whose construction documents were approved by the Construction Section prior to April 1, 2019 shall  
 2 comply with the codes and standards incorporated by reference in Items (1) through (3) of this Rule that were in effect  
 3 at the time construction documents were approved by the Construction Section.

4 (b) The facility shall develop and maintain an emergency preparedness program as required by 42 CFR Part 482.15  
 5 Condition of Participation: Emergency Preparedness. The emergency preparedness program shall be developed with  
 6 input from the local fire department and local emergency management agency. Documentation required to be  
 7 maintained by 42 CFR Part 482.15 shall be maintained at the facility for at least three years and shall be made available  
 8 to the Division during an inspection upon request.

9 (c) The facility shall comply with the "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care  
 10 Homes, and Other Institutions," 15A NCAC 18A .1300 of the North Carolina Division of Public Health,  
 11 Environmental Health Services Section.

12  
 13 *History Note: Authority G.S. 131E-79;*  
 14 *Eff. January 1, 1996; 1996;*  
 15 *Readopted Eff. April 1, 2019.*

16 10A NCAC 13B .6103 is proposed for readoption with substantive changes as follows:

17  
 18 **10A NCAC 13B .6103 APPLICATION OF PHYSICAL PLANT REQUIREMENTS EQUIVALENCY AND**  
 19 **CONFLICTS WITH REQUIREMENTS**

20 The physical plant requirements for each facility shall be applied as follows:

- 21 (1) ~~— New construction shall comply with the requirements of Section .6000 of this Subchapter;~~  
 22 (2) ~~— Existing buildings shall meet licensure and code requirements in effect at the time of construction,~~  
 23 ~~alteration, or modification;~~  
 24 (3) ~~— New additions, alterations, modifications, and repairs shall meet the technical requirements of~~  
 25 ~~Section .6000 of this Subchapter, however, where strict conformance with current requirements~~  
 26 ~~would be impractical, the authority having jurisdiction may approve alternative measures where the~~  
 27 ~~facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the~~  
 28 ~~safety or operating effectiveness of the facility;~~  
 29 (4) ~~— Rules contained in Section .6000 of this Subchapter are minimum requirements and not intended to~~  
 30 ~~prohibit buildings, systems or operational conditions that exceed minimum requirements;~~  
 31 (5) ~~— Equivalency: Alternate methods, procedures, design criteria, and functional variations from the~~  
 32 ~~physical plant requirements, because of extraordinary circumstances, new programs, or unusual~~  
 33 ~~conditions, may be approved by the authority having jurisdiction when the facility can effectively~~  
 34 ~~demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met~~  
 35 ~~and that the variation does not reduce the safety or operational effectiveness of the facility; and~~  
 36 (6) ~~— Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.~~

1 (a) The Division may grant an equivalency to allow an alternate design or functional variation from the requirements  
 2 in Rule .3102 and the Rules contained in Sections .6000 through .6200 of this Subchapter. The equivalency may be  
 3 granted by the Division if a governing body submits a written equivalency request to the Division that indicates the  
 4 following:

5 (1) the rule citation and the rule requirement that will not be met;

6 (2) the justification for the equivalency;

7 (3) how the proposed equivalency meets the intent of the corresponding rule requirement; and

8 (4) a statement by the governing body that the equivalency request will not reduce the safety and  
 9 operational effectiveness of the facility design and layout.

10 The governing body shall maintain a copy of the approved equivalence issued by the Division.

11 (b) If the rules, codes, or standards contained in this Subchapter conflict, the most restrictive requirement shall apply.

13 *History Note: Authority G.S. 131E-79;*

14 *Eff. January 1, 1996. 1996;*

15 *Readopted Eff. April 1, 2019.*

16 10A NCAC 13B .6207 is proposed for readoption with substantive changes as follows:

18 **10A NCAC 13B .6207 OUTPATIENT SURGICAL FACILITIES**

19 (a) ~~When~~ If a facility elects to share outpatient surgical facilities with inpatient surgical facilities, the outpatient  
 20 operating room and support areas shall meet the ~~same physical plant~~ requirements as ~~inpatient, general operating~~  
 21 ~~rooms and support areas~~, set forth in Sections .6000 through .6200 of this Subchapter.

22 (b) ~~When~~ If a facility elects to provide separate, non-sharable outpatient surgical facilities, the operating rooms and  
 23 support areas shall meet the ~~physical plant construction~~ requirements of ~~Outpatient Surgical Licensure requirements~~  
 24 set forth in Section .1400 of 10A NCAC 13C .1400. 13C.

26 *History Note: Authority G.S. 131E-79;*

27 *Eff. January 1, 1996. 1996;*

28 *Readopted Eff. April 1, 2019.*

# EXHIBIT F

## Pines at Davidson

### Compliance Summary:

- **No Violations of MCC Compliance policy**

1) Violations of 12 month compliance requirement (Section B of MCC Compliance Policy):

- NONE

2) Violations of multi-year history of non-compliance requirement (Section A of MCC Compliance Policy):

- NONE [FYE 2017 (Review of Routine Annual & Quarterly Filings) & FYE 2016 – No Findings; FYE 2015 – 1 Finding]

### Selected Application Information:

#### 1) Information from FY2017 Audit of Pines at Davidson:

Operating income	\$ 918,496
Change in unrestricted net assets	\$ 874,400
Change in net assets	\$ 2,148,132
Net cash provided by operating activities	\$ 1,396,600
Change in cash	\$ 1,334,551

#### 2) Ratings:

Fitch – A

#### 3) Community Benefits (2017):

Per N.C.G.S § 105 – 7.8% (Eligible for 100% property tax exclusion)

- Total Community Benefits and Charity Care - \$1,522,997

#### 4) Long-Term Debt Service Coverage Ratios:

Actual	FYE	2017	3.00
Forecasted	FYE	2018	7.19
Forecasted	FYE	2019	3.54
Forecasted	FYE	2020	3.43

**5) Transaction Participants:**

Underwriter	B.C. Ziegler and Company
Financial Advisor	Herbert J. Sims & Co., Inc.
Development Consultant	SFCS Inc.
Feasibility Consultant	CliftonLarsonAllen LLP
Bond Counsel	Robinson, Bradshaw & Hinson, P.A.
Corporation Counsel	McGuireWoods LLP
Underwriter Counsel	Womble Bond Dickinson (US) LLP
Trustee	U.S. Bank National Association
Trustee Counsel	<i>TBD</i>
Bank Purchaser	<i>TBD</i>
Bank Counsel	<i>TBD</i>

**6) Other Information:**

**(a) Board diversity**

Male: 13  
Female: 7  
Total: 20

Caucasian: 17  
Asian American: 2  
African American: 1  
20

**(b) Diversity of residents**

Male: 121  
Female: 269  
Total: 390

Caucasian: 383  
Asian American: 5  
African American: 2  
390

**(c) Fee Schedule – Attached (F-3 thru F-5)**

**(d) MCC Bond Sale Approval Policy Form – Attached (F-6)**

## c) Fee Schedule

### The Pines at Davidson Description of Fees

The Pines' fees are listed below. The Pines is very affordable to people in the local community, including low income individuals who own a home of average value. In order to assess the affordability of The Pines' fee structure, it is helpful to understand the following information:

- The average age of entry at The Pines has consistently ranged from 79 to 80 years old, reflecting nationwide trends. At age 80 the average retiree has several chronic health problems, typically has had an acute health problem in the past (or a spouse has had an acute health problem) and is challenged in performing certain aspects of his or her activities of daily living (such as cooking, bathing, toileting, etc.). This profile motivates a person to consider a CCRC for the assurance of health care.
- A prospective resident entering a CCRC with an average age of 80 needs sufficient financial resources to pay the CCRC's fees over his or her expected remaining life. A single male resident aged 80 has a life expectancy of approximately 8 years (based upon life expectancy tables developed by The Pines' actuary for the purpose of conducting its financial underwriting).
- A prospective resident entering a CCRC has two types of financial resources from which to pay a CCRC's fees. One type is fixed income such as Social Security and pension income. A second type is the prospective resident's net assets (and income earned on such net assets).
- The Pines does its financial underwriting for admission by comparing the present value of the prospective resident's financial resources to the present value of the fees that the prospective resident would be expected to pay over his or her remaining lifetime – if the former exceeds the latter then the prospective resident meets the minimum financial requirements for admission to The Pines.
- The Pines maintains 37 smaller Studio and Deluxe Studio Independent Living units and 79 One Bedroom ILUs inventory to provide affordable accommodations for people of low or very modest financial means, with Entrance Fees as low as \$47,800.
- The average sales price of a home in the 9-county area around The Pines was \$276,000 in FY 2017 based upon 41,000 home closings. U.S. Census Bureau data indicates that approximately 80% of individuals over the age of 65 own their own home (based upon 4<sup>th</sup> quarter 2016 census data).
- The table below shows the lifetime savings that are required to meet the minimum financial requirements for entry to The Pines assuming a prospective resident owns an average home (\$276,000 in a 9-county area around The Pines) and has a low (\$15,000) to modest (\$35,000) amount of fixed income such as Social Security and/or pension.

Examples of Home Value, Investments and Fixed Income Required to Meet Minimum Financial Requirements for Admission						
Unit Type	Square Feet	# of Units	1	2	1 + 2 = 3	Fixed Income
			Home Value	Investments	Net Worth	
<b>Existing units (sample)</b>						
Studio	418	7	276,000	-	276,000	15,000
Deluxe Studio	527	30	276,000	24,000	300,000	15,000
One Bedroom	722	79	276,000	112,000	388,000	15,000
<b>Proposed new units (Poplar Hill)</b>						
1 Bedroom with sunroom (Green)	1164	6	276,000	202,000	478,000	35,000
2 Bedroom with porch (Blue)	1515	2	276,000	317,000	593,000	35,000
2 Bedroom with sunroom (Red)	1667	14	276,000	345,000	621,000	35,000
2 Bedroom with sunroom & balcony (Yellow)	1681	16	276,000	356,000	632,000	35,000

- The table above demonstrates that the Independent Living units that The Pines proposes to construct as part of its Project are affordable to individuals who own an average home (\$276,000), have a modest amount of lifetime savings (\$202,000 to \$356,000) and a modest amount of fixed income from Social Security and pension (\$35,000). People with modest financial resources such as school teachers, ministers or police officers can afford one of The Pines' proposed 38 new Independent Living units as they typically own an average home, have a modest amount of lifetime savings and receive a pension.

The Pines is committed to maintaining affordability for residents and prospective residents. To this end, the Board of Directors adopted the following two measurable objectives. Management has consistently achieved these objectives.

- "Strive to limit increases in The Pines' monthly fees and per diem charges to not more than the respective median increase for a group of approximately 28 other North Carolina continuing care retirement communities."
- "Strive to maintain The Pines' per diem rate for a private nursing room at or below the respective median rate for the State of North Carolina."

The Pines maintains an Entry Assistance Fund financed with charitable gifts that is available to assist individuals who do not meet the minimum financial requirements for admission to The Pines. Individuals who have not had an opportunity to accumulate net assets and/or who have insufficient fixed income are eligible to be considered for the Entry Assistance Fund. The Pines' Entry Assistance Fund had approximately \$187,100 as of June 30, 2018. Since inception in the early 2000's, the Entry Assistance Fund has been used three to five times. In order to be eligible for the Entry Assistance Fund an individual must have no children or have children who lack the financial resources to provide a financial guaranty.

(FEES ARE LISTED ON NEXT PAGE)

**DESCRIPTION OF FEES  
JULY 1, 2018 & AFTER**

<b>Living Accommodation</b>	<b>Standard Entrance Fee</b>	<b>Single Occupancy Monthly Fee</b>	<b>Double Occupancy Monthly Fee</b>	<b>Number of Units</b>
<b>Existing Units – Not part of project</b>				
Studio	\$47,800	\$2,485	3,807	7
Deluxe Studio	64,500	2,605	3,926	30
One Bedroom	122,900	3,096	4,546	79
Two Bedroom	202,900	3,399	4,993	28
Two Bedroom Suite	208,500	3,490	5,082	10
Two Bedroom Deluxe	220,000	3,664	5,258	3
Cottage	214,500	3,686	5,427	4
Large Cottage	246,400	3,979	5,722	2
Large Cottage with Sunroom	260,800	3,979	5,722	38
Villa A*	349,468	4,000	5,756	24
Villa B*	375,241	4,073	5,827	8
Villa C*	415,717	4,185	5,939	8
Villa D*	428,710	4,222	5,977	8
Large Cottage w/Sunroom / Study & Two Car Garage	489,290	4,252	6,006	3
<b>Proposed New Units – Villas at Poplar Hill</b>				
Green*	281,939	3,490	5,082	6
Blue*	379,999	3,990	5,746	2
Red*	407,237	4,063	5,817	14
Yellow*	420,312	4,073	5,827	16
<b>Other</b>				
Second Person Fee	22,230			
<b>Total Independent Living Units</b>				<b>291</b>

\*Entrance fees effective July 10, 2018.



D) Bond Sale Approval Form

<b>NC MCC Bond Sale Approval Form</b>	
<b>Facility Name: The Pines at Davidson</b>	
<b>SERIES: 2018A (Public Bonds)</b>	<b>Time of Preliminary Approval</b>
PAR Amount	\$61,984,000.00
Estimated Interest Rate	5.25%
All-in True Interest Cost	5.50%
Maturity Schedule (Interest) - Date	12/1/2018 - 12/1/2048
Maturity Schedule (Principal) - Date	12/1/2019 - 12/1/2048
Bank Holding Period (if applicable) - Date	N/A
Estimated NPV Savings (\$) (if refunded bonds)	N/A
Estimated NPV Savings (%) (if refunded bonds)	N/A
<b>SERIES: 2018B (Bank Bonds)</b>	<b>Time of Preliminary Approval</b>
PAR Amount	\$10,400,000.00
Estimated Interest Rate	5.25%
All-in True Interest Cost	5.50%
Maturity Schedule (Interest) - Date	12/1/2019 - 12/1/2028
Maturity Schedule (Principal) - Date	12/1/2019 - 12/1/2028
Bank Holding Period (if applicable) - Date	10 Years
Estimated NPV Savings (\$) (if refunded bonds)	N/A
Estimated NPV Savings (%) (if refunded bonds)	N/A
<b>NOTES:</b>	
- The bank bonds will be repaid with a portion of the initial entrance fees from the independent living units, hence the shorter maturity schedule.	