Fiscal Impact Analysis of
Permanent Rule Adoption without Substantial Economic Impact

Agency Proposing Rule Change
North Carolina Medical Care Commission

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Impact Summary

Federal Government:	No Impact
State Government:	Negligible Impact
Local Government:	No Impact
Small Business:	Negligible Impact
Substantial Impact:	No

Titles of Rule Changes and Statutory Citations

10A NCAC 13D

Section .2000 – General Information
- Definitions 10A NCAC 13D .2001 (Readopt)

Section .2400 – Medical Records
- Preservation of Medical Records 10A NCAC 13D .2402 (Readopt)

Section .2500 – Physician's Services
- Use of Nurse Practitioners and Physician Assistants 10A NCAC 13D .2503 (Readopt)

Section .3200 – Functional Requirements
- Required Spaces 10A NCAC 13D .3201 (Readopt)

See proposed text of these rules in Appendix 1

Authorizing Statutes

N.C.G.S. § 131E-104

Background

Under authority of N.C.G.S. § 150B-21.3A, Periodic review and expiration of existing rules, the Medical Care Commission, Rule Review Commission and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC 13D – Rules for the Licensing of Nursing Homes – on November 14, 2014, January 15, 2015, and March 22, 2015, respectively. The following six rules were classified as necessary with substantive public interest in this report: 10A NCAC 13D .2001, .2210, .2303, .2402, .2503, and .3201.

Of the six rules, the agency is presenting 10A NCAC 13D .2001, .2402, .2503 and .3201 for readoption with changes:

- 10A NCAC 13D .2001 is the definition rule and is being changed for the following reasons:
    - definitions for persons licensed by another board or authority must be removed,
    - definitions not being used in the rules themselves must be removed;
    - definitions with ambiguous language had to be modified, and
    - definitions related to facility construction needed to be added or were out of date and needed revisions;
- 10A NCAC 13D .2402 and .2503 are revised for clarity purposes; and
- 10A NCAC 13D .3201 requires changes because the current rule language is ambiguous and difficult to use. Additionally, the agency is adding the following requirements to this rule:
    - windows in patient bedrooms to match a federal regulation,
    - a maximum travel distance from the nurse station to the furthest patient bedroom to improve patient safety, and
    - direct access to the outdoors for a special care unit to enhance quality of life for patients.

The remaining rules are being readopted with technical changes and are not included in this fiscal note.

Rules Summary and Anticipated Fiscal Impact

Rule .2001 – Definitions

The agency is proposing to readopt this rule with changes. The agency removed from this rule all definitions for persons licensed or regulated under another board or authority, except for "Administrator" and "Director of Nursing". The agency is also removing the following definitions:

- "Adequate",
- "Appropriate",
- "Convalescent care",
- "Drug",
- "Exit Conference",
- "Finding",
- "HIV Unit",
- "Licensed",
- "Medical Consultations",
- "Medication",
- "Nurse aide trainee",
- "Pharmaceutical care",
- "Proposal",
- "Provisional license",
- "Significant medication error",
- "Single Unit or unit dose package", and
- "Unit Dose System".

Definitions were added for "Addition" and "Alteration". The rule language for the following definitions were amended:

- "Administrator",
- "Comprehensive, inpatient rehabilitation program",
- "Existing facility",
- "Interdisciplinary",
- "Medication error rate",
- "New facility",
- "Nurse Aide",
- "Remodeling",
- "Surveyor", and
- "Violation".

The agency made additional technical changes to several other definitions.

Rule 10A NCAC 13D .2001 is proposed for readoption to be compatible with definitions found in the federal regulations for skilled nursing homes. These rules apply to licensed nursing homes in North Carolina that provide care for persons who have remedial ailments or other ailments for which medical and nursing care are indicated; who however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

Regulation by the State of North Carolina of skilled nursing facilities is subject to the provisions of 42 CFR 488.301. The readoption of the above-named rule is necessary to comply with the federal regulations for nursing home definitions found in §488.301 (see Appendix 2).

Fiscal Impact

No fiscal impact associated with the readoption of this rule.

Rule .2402 – Preservation of Medical Records

The agency is proposing to readopt this rule with changes. The second sentence in Paragraph (c) was revised for clarity.

Fiscal Impact

No fiscal impact associated with the readoption of this rule.

Rule .2503 – Use of Nurse Practitioners and Physician Assistants

The agency is proposing to readopt this rule with changes. "Instructions or written protocols" was replaced in Paragraph (a) (2) with "the job description or contract". In Paragraph (b), more specific rule references were given for the nurse practitioner and physician assistant privileges.

Fiscal Impact

No fiscal impact associated with the readoption of this rule.

Rule .3201 – Required Spaces

The agency is proposing to readopt this rule with changes. This rule contains the rooms, spaces, and areas required in a nursing home. A majority of the rule changes are related to re-organizing and re-formatting the rule making it easier to use.

The following requirement was deleted from this rule:

- In the current Paragraph (a), the sentence "When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and shall not be used as a multi-bedroom unless approved in advance by the Division as meeting the requirements of G.S. 131E, Article 9." N.C.G.S 131E, Article 9 clearly states that a facility must seek approval of a certificate of need for a change in the facility's bed capacity. It is redundant to repeat this requirement again in this rule.

The following requirements were added to this rule:

- In Paragraph (a)(3), a patient bedroom is required to "have windows with views to the outside" and "the gross window area of these windows shall not be less than 8 per cent of the required patient

bedroom floor area indicated in Paragraph (a)(1) and (2)." A federal regulation and two national standards support adding these window requirements. All certified and non-certified nursing homes in the state currently have windows in patient bedrooms. The 98 percent[1] of nursing homes in the state certified by the Centers for Medicare and Medicaid Services (CMS) must comply with 42 CFR 483.70,[2] which requires windows with views to the outside. The 2 percent of non-certified nursing homes in the state also have windows in patient bedrooms. These non-certified nursing homes have more upscale facilities than other nursing homes and exceed many of the minimum physical plant standards established in 10A NCAC 13D, including the provision of windows in patient bedrooms. The 2010 edition of the *Guidelines for Design and Construction of Health, Care Facilities*[3] (*Guidelines*) indicate[4] that the design of a nursing home should minimize the aspects of an institutional environment by creating a home-like setting, which includes providing windows in patient bedrooms. The *Guidelines* also indicate that the provision of natural light should be considered wherever possible in the design of a nursing home's physical environment including in patient bedrooms. The *2012 North Carolina Residential Code* (NCRC) contains standards for homes in North Carolina[5]. The NCRC requires bedroom windows to have "an aggregate area of 8 percent of the bedroom floor area."

- In Paragraph (c), a memory care unit in the adult care home portion of a combination facility "shall have direct access to the outdoors." The addition of this requirement is justified by: the higher physical activity level of an adult care home resident as compared to a nursing home patient; the current Adult Care Home Rules located at 10A NCAC Subchapter 13F; and a national standard. Adult care home residents need assistance with medication and activities of daily living. Some adult care home residents are placed in secure memory care units due to cognitive impairments that may jeopardize their well-being and personal safety. Nursing home patients need around-the-clock nursing care and assistance. As a result, adult care home residents are more active and less frail than nursing home patients. This is even true for adult care home residents located in secured memory care units. If a combination facility is constructed without a two-hour fire resistive wall separating the nursing and adult care home beds, the adult care home portion of the facility is required to meet the Nursing Home Rules as opposed to the Adult Care Home Rules. The current Nursing Home Rules do not require a dementia or memory care unit in the adult care portion of the facility to have "direct access to the outdoors" even though the Adult Care Home Rules do. Adding this requirement to the Nursing Home Rules makes the two rules sets compatible with one another with respect to dementia units. Additionally, the *Guidelines* indicate[6] that residents of dementia units should have access to outdoor gardens or lounge areas.[7] The *Guidelines* also indicate that the outdoors reduces the disruptive behavior of patients with dementia.

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[1] The North Carolina Department of Health and Human Services, Division of Health Service Regulation, "Nursing Facilities Licensed by the State of North Carolina", http://www2.ncdhhs.gov/dhsr/data/nhlist_a.pdf (August 2015).
[2] The Center for Medicare and Medicaid Services, *42 Code of Federal Regulation 483.70 Physical Environment*, http://www.gpo.gov/fdsys/pkg/CFR-2005-title42-vol3/pdf/CFR-2005-title42-vol3-sec483-70.pdf (August 2015).
[3] Facility Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities, 2010 Edition* (Chicago: American Society of Healthcare Engineering of the American Hospital Association, 2010), 325-328.
[4] The *Guidelines* are a national design standard adopted by reference in many states in the country. It has not been adopted in North Carolina. Because healthcare industry experts develop and revise the *Guidelines* on a regular basis, it is used by many design professionals in the design of healthcare facilities including nursing homes.
[5] The NC Department of Insurance, *2012 North Carolina Residential Code* (International Code Council, July 2012), 37.
[6] The *Guidelines* are a national design standard adopted by reference in many states in the country. It has not been adopted in North Carolina. Because healthcare industry experts develop and revise the *Guidelines* on a regular basis, it is used by many design professionals in the design of healthcare facilities including nursing homes.
[7] Facility Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities, 2010 Edition* (Chicago: American Society of Healthcare Engineering of the American Hospital Association, 2010), 329.

- In Paragraph (e)(5)(D), the central bathing area shall be provided with "a cubicle curtain enclosing the toilet, tub and shower." State law[8] and federal regulations for nursing facilities currently require privacy for patients when using toilets, tubs, and showers. The Interpretive Guideline for 42 CFR 483.10(e)[9] states that "a resident must be granted privacy when going to the bathroom and in other activities of personal hygiene". As a result, the Construction Section currently requires cubicle curtains at toilets, tubs and showers located in a central bathing room even though the rule language does not specifically require it. All current facilities already meet this requirement, either because they are CMS certified and have to comply with federal regulations or because of their upscale facilities. Adding this requirement to the rule now notifies a future facility prior to submittal of plans for review that cubicle curtains are required. Given that this is now an industry norm in North Carolina, it is highly unlikely that this addition would create an extra cost that would not exist in the absence of this rule amendment.

- In Paragraph (f)(9), language was added requiring a control point or nurse station to be "located no more than 150 feet from the furthest patient bedroom door." Restricting the travel distance from a nurse station to a patient room is important because it improves patient health and safety by providing more efficient nursing care,[10] and because it decreases staff stress by reducing staff response time and travel distance.[11] The *Guidelines* indicate that the maximum travel distance from a nurse station to a patient room door for optimal nursing efficiency is a 150 feet.[12]

The following paragraph language was changed without adding new requirements:

- In Paragraph (b)(1), the proposed language makes it clear to a nursing facility or the nursing home portion of a combination facility that it shall provide "a separate area or areas set aside for dining, measuring not less than 10 square feet per bed", "a separate area set aside for activities measuring not less than 10 square feet per bed", and "an additional dining, activity and common use areas measuring not less than 5 square feet per bed." This language is less confusing than the current language, which requires a total dining and activity area of 25 square feet per bed in one location in the rule (current Paragraph (b)), and a dining area of 10 square feet per bed and activity area of 10 square feet per bed in another location in the rule (current Paragraph (c)). The proposed language is easier to understand, but adds no additional square footage for dining, activity, or common use areas.

- In Paragraph (b)(2), the proposed language makes it clear to a combination facility that it shall provide "a separate area or areas set aside for dining, measuring not less than 14 square feet per bed", and "a separate area or areas set aside for activities, measuring not less than 16 square feet per bed" for the adult care home portion of the facility. This language is less confusing than the current rule language, which requires a total dining and activity area of 30 square feet per adult care home bed in one location in the rule (current Paragraph (b)), and a dining area of 14 square feet per adult care home bed and activity area of 16 square feet per adult care home bed in another location in the rule (current

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[8] The North Carolina General Assembly, *N.C.G.S. Chapter 131E, Article 6, Part 2. Nursing Home Patients' Bill of Rights,* http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_131E/Article_6.pdf (October 2015).

[9] The Centers for Medicare and Medicaid Services, *State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities*, February 2015 , https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf (August 2015).

[10] Anjali Joseph, Ph.D., "Health Promotion by Design in Long-Term Care Settings." *The Center for Health Design,* August 2006, https://www.healthdesign.org/chd/research/health-promotion-design-long-term-care-settings (August 2015).

[11] L. Pekkarinen, et. al., "Work stressors and the quality of life in long-term care unit," *The Gerontologist, 44*(5), (2004): 633.

[12] Facility Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities, 2010 Edition* (Chicago: American Society of Healthcare Engineering of the American Hospital Association, 2010), 326.

Paragraph (d)). The proposed language is easier to understand, but adds no additional square footage for dining, activity or common use areas.

- In Paragraph (e)(5)(A), rule language was added to allow a manufactured walk-in bathtub to be accessible on two sides rather than three sides. Under the current rules, facilities with a manufactured walk-in bathtub are routinely granted an equivalency for accessibility on two sides rather than three sides. 10A NCAC 13D .3102(5) allows the Construction Section to grant an "equivalency" for an alternate design, which is not in strict compliance with the rules located in Sections .3100, .3200 and .3400. The facility must demonstrate that the alternate design is equivalently safe to the requirements of the rule. Accessibility on two sides of a manufactured walk-in bathtub is equivalently safe to accessibility on three sides of a conventional bath tub because the walk-in bathtub has a door on one side of the tub that provides easy access for patients with limited mobility. This proposed rule language reduces time spent on granting equivalencies.

- In Paragraph (e)(5)(B), a facility is allowed to omit a roll-in shower from the central bathing area if one is provided in a bathroom adjoining each bedroom in the facility. The current rule language does not allow this. Currently, facilities constructed with roll-in showers in a bathroom adjoining each patient bedroom are routinely granted an equivalency for omitting the roll-in shower in the central bathing area. This proposed rule language reduces time spent on granting equivalencies.

- The current language indicates that "storage at the rate of not less than five square feet of floor area per licensed bed" must be provided by a nursing facility. In paragraph (k), rule language was added to indicate that the storage was to "be used by patients and residents to store out-of-season clothing". Some nursing facilities were confused by the current language and did not realize that the storage was for nursing home patients and adult care home residents. The Construction Section has always interpreted that this storage was for patient and resident use. The proposed rule language is less ambiguous and confusing to nursing facilities, but does not add any additional requirements to nursing facilities.

Impact

Federal
No fiscal impact associated with the readoption of this rule.

State
The readoption of this rule will result in a fiscal impact related to additional costs associated with additional DHSR plan review time of nursing home construction projects and future renovations to state operated nursing home facilities. Table 1 below provides an estimate of the DHSR staff architectural review time for the changes made to this rule based on nursing home projects submitted in the previous year. As indicated in Table 1, the net total review time for rule changes is 14 hours based on the average number of projects over the past five years, which needed a review for a particular item. This results in 14 additional hours spent by the Division annually, which at $53 per hour compensation rate (DHSR architect salary with fringe benefits) yields a total annual cost of close to $740, assuming compensation stays flat in the next few years.

Table 1. Net Total Impact to DHSR Review Time

Rule location	Item	Impact to Review Time Per Project (+/- hrs.)	Estimated Projects with Item Needing Review per Year [a]	Total Impact to Review Time (+/- hrs.)
Paragraph (a)(3)	Provide windows with views to the outside in patient rooms	+2	12	+24
Paragraph (c)	Provide adult care bed in Special Care Units (SCU) direct access to outdoors	+1	0 [b]	0
Paragraph (e)(5)(A)	Equivalency approval for manufactured walk-in bathtub with accessibility on two sides	-3	5	-15
Paragraph (e)(5)(B)	Equivalency approval for omitting roll-in shower from central bathing room	-3	5	-15
Paragraph (e)(5)(B)	Provide bathroom adjoining each patient bedroom with a roll-in shower	+2 [c]	5	+10
Paragraph (e)(5)(D)	Provide cubicle curtains at toilet, tub, and shower in central bathing room.	0 [d]	0	0
Paragraph (f)(9)	Provide nurse station located no more than 150 feet from furthest patient room	+1	10	+10
Net Total				14

[a] Plans submitted between 8/2014 and 8/2015 were reviewed to determine the number of projects needing a review for a particular item. This number was then multiplied by a factor of 1.23, or 64/52 where the former is the average number of projects submitted per year for the past five years and the latter is the number of projects submitted between 8/2014 and 8/2015. In the past five years, there was no upward trend in the number of projects submitted each year.

[b] Insufficient evidence exists to provide a reasonable quantitative estimate for adding this requirement. From July 2013 to July 2016, N. C. Session Law 2014-100 issued a moratorium on the licensing of new special care units. Exceptions are allowed, but no new adult care home special care units have been approved in a nursing home since July 2013. Additionally, none of the construction or renovation projects submitted from August 2014 to August 2015 included the replacement construction or renovation of an existing adult care special care unit.

[c] If a roll-in shower is omitted from the central bathing area, review time would be spent checking the bathrooms adjoining every patient room for a roll-in shower.

[d] Due to a state law and federal regulation, the Construction Section currently enforces the requirement for cubicle curtains at these plumbing fixtures.[13],[14]

The possible future increase in construction or renovation costs for state operated nursing homes are discussed below. There are four North Carolina State Veterans Homes located in Fayetteville, Salisbury, Kinston, and Black Mountain, which are state licensed and CMS certified as nursing homes. Longleaf, O'Berry, and Black Mountain Neuro Treatment Centers are state operated nursing homes that are not licensed by the state, but comply voluntarily with state nursing home licensure rules related to construction. All three facilities are certified by CMS. Cost or no cost impacts resulting from rule changes are listed below.

[13] The Centers for Medicare and Medicaid Services, *State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities*, February 2015 , https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf (August 2015).

[14] The North Carolina General Assembly, *N.C.G.S. Chapter 131E, Article 6, Part 2. Nursing Home Patients' Bill of Rights,* http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_131E/Article_6.pdf (October 2015).

- Paragraph (a)(3): If patient bedrooms are added to these facilities, CMS already requires windows in patient bedrooms. As a result, an increase in cost for providing windows in patient rooms is not expected.
- Paragraph (c): None of these facilities have adult care home beds. Therefore, requiring an adult care bed SCU direct access to the outdoors would not impact construction costs.
- Paragraph (e)(5)(D): Because all of these facilities are certified by CMS and CMS requires patient privacy when using toilets, tubs and showers, there would be no cost increase for requiring cubicle curtains at toilets, tubs and showers in a central bathing room.[15]
- Paragraph (f)(9): If the renovation requires the construction of a nurse station, an increase cost may result from requiring nurse stations to be located no more than 150 feet from the furthest patient bedroom door.
  At this time, insufficient evidence exists to estimate the annual cost impact to state operated nursing homes.

Local Government

No fiscal impact associated with the readoption of this rule.

Nursing Home Patients and Residents

Nursing home patients and residents would benefit from the readoption of this rule in several ways. Although these benefits are non-quantifiable in nature, they are still relevant as follows:

- Paragraph (a)(3): Requiring windows in bedrooms will ensure that patients and residents have direct exposure to daylight. Daylight exposure has been shown to help patients or residents maintain their normal circadian rhythm, which in turn decreases their chance of developing a sleep disorder.[16] Sleep disorders have been associated with a decrease in quality of life and increase in the morbidity of nursing home occupants.[17] Studies have also shown that seeing nature, via windows with views to the outdoors, is an effective means of relieving stress and improving the well-being of nursing home patients and residents.[18] Although this benefit is important, since the current industry standard practices in the state already meet the proposed requirement, there would be no additional benefits derived as a result of this rule change.

- Paragraph (c): Providing an adult care special care unit with direct access to the outdoors will provide dementia patients who wander a more positive outlet for their wandering. Wandering is a major behavioral symptom of diseases related to dementia. Studies have indicated that providing secure outdoor spaces to wander rather than physical restraints decreased the number of violent episodes

[15] The Centers for Medicare and Medicaid Services, *State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities*, February 2015 , https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf (August 2015).
[16] J. Martin, et. al., *"*Daytime Sleeping, Sleep Disturbance, and Circadian Rhythms in the Nursing Home*"*, February 2006, http://www.ncbi.nlm.nih.gov/pubmed/16473976, (October 2015).
[17] A. Neikrug & S. Ancoli-Isreal, "Sleep Disturbances in Nursing Homes", *The Journal of Nutrition Health and Aging*, 2010 http://www.researchgate.net/publication/41623835_Sleep_disturbances_in_nursing_homes (October 2015)
[18] T. Zborowsky, RN, PHD, et.al., "Creating Optimal Healing Environments in a Health Care Setting", *Clinical and Health Affairs*, March, 2008, http://www.minnesotamedicine.com/Past-Issues/Past-Issues-2008/March-2008/Clinical-Zborowsky-March-2008 (October 2015).

experienced by dementia patients.[19] These benefits would only be realized to the extent there are any future projects that would include the construction or renovation of an adult care special care unit.

- Paragraph (e)(5)(D): In a central bathing room, adding a cubicle curtain at the toilet, tub and shower maintains a resident's privacy. Privacy afforded by cubicle curtains alleviates a patient's or resident's self-consciousness and helps them maintain their dignity.[20] However, it is unlikely that there would be any additional benefit related to this change given the proposed amendment is an industry norm in North Carolina due to statutory and federal requirements.

- Paragraph (f)(9): Requiring a maximum travel distance of 150 feet from a nurse station to the furthest patient room will improve a patient's and resident's health and safety. A decrease in patient safety has been linked to human error caused by staff fatigue. A study has shown limiting staff travel distance from support areas to patient rooms decreases staff fatigue.[21]

Nursing Home Providers

The readoption of this rule would result in a fiscal impact to nursing home providers related to the following paragraphs.

- Paragraph (a)(3): From August 2014 to August 2015, there were ten nursing home construction projects submitted, which included the construction of patient bedrooms. In these projects, windows with views to the outside were provided in every patient bedroom and the average percentage of gross window area to the required bedroom floor area ranged from 12% to 32%. The proposed rule requires a gross window area of 8%. The low end percentage (12%) of this range is greater than the proposed percentage of 8%. Additionally, the current standard industry practice is to install two to three windows in patient and resident bedrooms that are each three feet wide by five feet high. The installation of one these windows in a patient or resident bedroom exceeds the gross window area requirement of 8% of the floor area.[22] Adding this requirement to the rule will not change this current industry practice. Therefore, there will be no annual cost impact for future construction of patient bedrooms due to a requirement for windows in patient bedrooms.

- Paragraph (c): Insufficient evidence exists to provide a reasonable quantitative estimate for adding the requirement that an adult care bed special care unit shall have direct access to the outdoors. From July 31, 2013 to July 1 2016, N. C. Session Law 2014-100 issued a moratorium on the licensing of new special care units. Exceptions are allowed, but no new adult care home special care units have been approved in a nursing home since July 2013. Additionally, none of the construction or renovation projects submitted from August 2014 to August 2015 included the replacement construction or renovation of an existing adult care special care unit.

- Paragraph (e)(5)(A) and Paragraph (e)(5)(B): Where the regulatory approvals of a project is based on an hourly fee in the design architect's contract, nursing home providers will pay a reduced design architectural fee for the following items: allowing two side accessibility at a manufactured walk-in

[19] Anjali Joseph, Ph.D., "Health Promotion by Design in Long-Term Care Settings." *The Center for Health Design,* August 2006, https://www.healthdesign.org/chd/research/health-promotion-design-long-term-care-settings (August 2015).
[20] J. Moller, ASID, & C. Renegar "Bathing as a Wellness Experience", http://www.ltlmagazine.com/article/bathing-wellness-experience (October 2015).
[21] John Reiling, et. al., "The Impact of Facility Design on Patient Safety", *Patient Safety and Quality: An Evidence Based Handbook for Nurses.* April, 2008. http://www.ncbi.nlm.nih.gov/books/NBK2633/ (October 2015)
[22] Mark Saulnier, Discussion concerning standard sizes of windows in nursing homes, NC DHHS, DHSR licensed Architect, (September, 2015).

bathtub in the central bathing room and allowing the omission of a roll-in shower from the central bathing area if one is provided in a bathroom adjoining each bedroom in the facility. Design architects will no longer be required to prepare equivalencies for these items. For each item, it is estimated that the reduction in design architect time would be 3 hours. As indicated in Table 1, there would be an estimated five projects per year, based on the average number of projects submitted over the past five years, which would have to meet these two requirements. The estimated annual reduction in design architect time is 30 hours. This results in 30 hours annually at $37 per hour (design architect salary with fringe benefits)[23] for an annual benefit cost (reduction in cost) of close to $1,110. It is assumed that the design architect's compensation level will not increase significantly over the next few years. Another benefit to nursing home providers would be a decrease in time the design architect would spent preparing letters to request the equivalency. Time saved would be approximately 1 hour per letter per project. Based on the number of projects in Table 1 for these items, 10 hours would be saved annually beads on a five-year average of projects. This results in 10 hours annually at $37 per hour (project manager salary with fringe benefits)[24] for a total annual benefit (reduction in cost) of $370. It is assumed that the design architect's compensation level will not increase significantly over the next few years. The total annual benefit cost (reduction in cost) for this change would be $1,480.

- Paragraph (e)(5)(D): Due to a state law[25] and federal regulation,[26] the Construction Section currently enforces the installation of cubicle curtains at toilet, tubs and showers in the central bathing room. Therefore, there is no annual cost for adding this requirement.

- Paragraph (f)(9): Based on Table 1, there were ten nursing home construction projects submitted, which involved the construction of nurse stations. Only one of these projects had a nurse station located more than 150 feet from the furthest patient bedroom door. In order to comply with the maximum 150 feet travel distance, an additional nurse station would need to be constructed at this facility. A standard nurse station is approximately 100 square feet. At a cost of about $190 per square feet,[27,28] the total annual projected cost for requiring a maximum travel distance of 150 feet from a nurse station to the furthest patient bedroom door is $19,000. The annual cost is expected to remain fairly level over the next few years.

The aggregate total annual cost to nursing home providers is equal to $19,000 (Paragraph (f)(9)), while cost savings equal $1,480 (Paragraph (e)(5)(B) and Paragraph (e)(5)(B)) for a net cost of close to $17,500.

Substantial Impact

As presented above, the estimated annual costs from the proposed changes do not amount to $1 million or more; therefore, the Division estimates there would not be a substantial economic impact as a result of the proposed changes to the readopted rules.

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[23] Bureau of Labor Statistics, "Occupational Employment and Wages, May 2014, 17-0000 Architecture and Engineering Occupations, http://www.bls.gov/oes/current/oes170000.htm (October, 2015).

[24] Ibid.

[25] The North Carolina General Assembly, *N.C.G.S. Chapter 131E, Article 6, Part 2. Nursing Home Patients' Bill of Rights,http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_131E/Article_6.pdf* (October 2015).

[26] The Centers for Medicare and Medicaid Services, *State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities*, February 2015 , https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf (August 2015).

[27] RS Means, "Construction Cost Estimates for Nursing Homes in National US" http://www.rsmeans.com/models/nursing-home/ (August 2013).

[28] This cost has been increased by a 2.5% escalation factor for an increase in construction costs expected in 2015 based on recommendations from International Contractors website located at http://www.iciinc.com/blog/construction-cost-escalation-trends-predictions/.

Summary

For 10A NCAC 13D .2001, .2402 and .2503, there will be no fiscal impact to any affected persons with the readoption of these rules.

For 10A NCAC 13D .3201, the rule changes being proposed will provide patients and residents with non-quantifiable benefits. These non-quantifiable benefits could include: improvements to quality of life; improvements to health and safety; and maintenance of their privacy and dignity.

For 10A NCAC 13D .3201, there will also be a negligible impact to the State and a non-substantial impact on nursing home providers. The impact to the State will result from an increase in DHSR review time and future construction to state operated nursing homes. The total annual cost of the additional DHSR review time is less than $750 and can be absorbed within the Construction Section and Department's operating budget without any increase to state funds. Depending on the type of construction or renovation work, there may be a possible future increase in construction or renovation costs for state operated nursing homes, but without knowledge of the type of construction or renovation work the annual cost impact cannot be estimated. Additionally, the Capital Budget of Session Law 2015-241 (H97)[29] does not include any funds for construction at state operated nursing homes.

Nursing home providers will be impacted by 10A NCAC 13D .3201 as indicated in Table 2. The total aggregate net annual cost to nursing home providers for changes to this rule are $17,500.

Table 2. Summary of Total Aggregate Net Annual Impact

Rule location	Item	Annual Net Cost to DHSR	Annual Net Cost to Nursing Home Providers
Paragraph (a)(3)	provide windows with views to the outside in patient rooms	$1,280	0
Paragraph (c)	provide adult care bed SCU direct access to outdoors	unquantified	unquantified
Paragraph (e)(5)(A)& (e)(5)(B)	equivalency approval not required for manufactured walk-in bathtub with accessibility on two sides & omitting roll-in shower from central bathing room	-$1,070 [a]	-$1,480 [a]
Paragraph (e)(5)(D)	Provide cubicle curtains at toilet, tub and shower in central bathing room.	0	0****
Paragraph (f)(9)	provide nurse station located no more than 150 feet from furthest patient bedroom	$530	$19,000
	Total Aggregate Annual Cost	$740	$17,500

[a] This is a benefit or reduction in cost.

Finally, the total estimated annual cost impact to the State and nursing home providers is indicated in Table 2 and is less than $18,250.

[29] The North Carolina General Assembly, Session Law 2015-241 (House Bill 97), http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf (October 2015).

Appendix 1

Proposed Rule Changes

10A NCAC 13D .2001 is proposed for readoption with changes as follows:

10A NCAC 13D .2001 DEFINITIONS

~~The following definitions will apply throughout this Subchapter:~~

~~(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.~~

~~(2) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.~~

~~(3) "Accredited medical record technician" means a person trained in record maintenance and preservation, and accredited by the American Health Information Management Association.~~

~~(4) "Adequate" means, when applied to various services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.~~

~~(5) "Administrator" means a person licensed by the North Carolina State Board of Examiners for Nursing Home Administrators in accordance with G.S. 90-276, Article 20, and who has authority for and is responsible for the overall operation of a facility.~~

~~(6) "Appropriate" means right, suitable or proper for the specified use or purpose, suitable or proper, when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.~~

~~(7) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.~~

~~(8) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.~~

~~(9) "Case manager" means the individual responsible for the coordination of services, for a given patient, between disciplines so that the patient may reach optimal rehabilitation through the judicious use of resources.~~

~~(10) "Combination facility" means a combination home as defined in G.S. 131E-101.~~

~~(11) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive, rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial and cognitive deficits.~~

~~(12) "Convalescent care" means care given for the purpose of assisting the patient or resident to regain health or strength.~~

~~(13) "Department" means the North Carolina Department of Health and Human Services.~~

(14) "Dietitian" means a person who is licensed according to G.S. 90, Article 25, or is registered by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA) according to the standards and qualifications as referenced in the second edition of the "Accreditation/Approval Manual for Dietetic Education Program," "The Registration Eligibility Application for Dietitians" and the "Continuing Professional Education" which are hereby incorporated by reference, including subsequent amendments and editions. Copies of the manual may be purchased from ADA Sales Order Department, 216 W. Jackson Blvd., Chicago, IL 60606-6995 for twenty-one dollars and ninety-five cents ($21.95), plus three dollars ($3.00) shipping and handling.

(15) "Director of nursing" means a registered nurse who has authority and direct responsibility for all nursing services and nursing care.

(16) "Discharge" means a patient who physically relocates to another health care setting or is discharged home or relocated from a nursing bed to an adult care home bed or from an adult care home bed to a nursing bed.

(17) "Drug" means substances:

(a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and

(d) intended for use as a component of any article specified in Subitems (a), (b), or (c) of this Subparagraph.

(18) "Existing facility" means a facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the design development drawings stage prior to the effective date of this Rule.

(19) "Exit conference" means the conference held at the end of a survey or investigation between the Department's representatives and the facility administration representative.

(20) "Facility" means a nursing facility or combination facility as defined in this Rule.

(21) "Finding" (when used in conjunction with the Nurse Aide program) means a determination by the Department that an allegation of patient abuse or neglect, or misappropriation of patient property has been substantiated.

(22) "HIV Unit" means designated areas dedicated to patients or residents known to have Human Immunodeficiency Virus disease.

(23) "Incident" means any happening, event or occurrence which is unplanned, unusual or unwanted and has actually caused harm to a patient or has the potential for harm.

(24) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.

(25) "Interdisciplinary" means an integrated process involving a representative from appropriate disciplines of the health care team.

(26) "Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.

(27) "Licensed practical nurse" means a nurse who is licensed as a practical nurse under G.S. 90, Article 9A.

(28) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license to operate the facility has been issued. The licensee is the legal entity which is responsible for the operation of the business.

(29) "Medical consultations" means consultations which the rehabilitation physician, the attending physician or other authorized persons determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.

(30) "Medication" means drug as defined in Item (17) of this Rule.

(31) "Medication error rate" means a discrepancy between what was ordered and what is actually administered. It is the number of errors observed divided by the opportunities for error times 100.

(32) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's belongings or money without the patient's consent.

(33) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

(34) "New facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.

(35) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and is in compliance with 42 CFR Part 483 which is incorporated by reference, including subsequent amendments. Copies of the Code of Federal Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15202-7954 for thirty eight dollars ($38.00) and may be purchased with a credit card by a direct telephone call to the G.P.O. at (202) 512-1800.

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

(37) "Nursing facility" means a nursing home as defined in G.S. 131E-101.

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

(39) "Occupational therapist" means a person licensed in the State of North Carolina as an occupational therapist in accordance with the provisions of G.S. 90, Article 18D.

(40) "Occupational therapist assistant" means a person licensed in the State of North Carolina as an occupational therapist assistant in accordance with the provisions of G.S. 90, Article 18D.

(41) "On-duty personnel" means personnel who are responsive to patient needs and physically present in the facility performing assigned duties.

(42) "Patient" means any person admitted for nursing care.

(43) "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.

(44) "Pharmacist" means a person who is licensed to practice pharmacy in North Carolina.

(45) "Physician" means a person licensed under G.S. 90, Article 1 to practice medicine in North Carolina.

(46) "Proposal" means a Negative Action Proposal containing information that may ultimately be classified as violations.

(47) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules.

(48) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.

(49) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.

(50) "Physical therapist" means a person licensed in the State of North Carolina as a physical therapist in accordance with the provisions of G.S. 90, Article 18B.

(51) "Physical therapist assistant" means a person licensed in the State of North Carolina as a physical therapist assistant in accordance with the provisions of G.S. 90-270.24, Article 18B.

(52) "Recreational therapist" means a person certified by the State of North Carolina Therapeutic Recreational Certification Board.

(53) "Registered Nurse" means a nurse who is licensed as a registered nurse under G.S. 90, Article 9A.

(54) "Registered Records Administrator" means a person who is registered by the American Health Information Management Association.

(55) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with training, either academic or on-the-job, in physical rehabilitation nursing and at least one year experience in physical rehabilitation nursing.

(56) "Rehabilitation aide" means an unlicensed assistant who works under the supervision of a registered nurse, licensed physical therapist or occupational therapist in accordance with the appropriate occupational licensure laws governing his or her supervisor and consistent with staffing requirements as set forth in Rule .3027 of this Subchapter. Any rehabilitation aide, who works in a nursing department and is under the supervision of a registered nurse, shall be listed on the North Carolina Nurse Aide Registry and have received additional staff training as listed in Rule .3028 of this Subchapter.

(57) "Rehabilitation physician" means a physiatrist or a physician who is qualified, based on education, training and experience, regardless of specialty, to provide medical care to rehabilitation patients.

(58) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing facility.

(59) "Resident" means any person admitted for care to an adult care home part of a combination facility as defined in G.S. 131E-101.

(60) "Respite care" means services provided for persons admitted to a nursing facility on a temporary basis, not to exceed 30 days.

(61) "Significant medication error" means an error which causes the patient discomfort or jeopardizes the health and safety of the patient. Factors to consider when determining significance of error include the patient's condition, the drug category (need titration of blood levels, etc.) and frequency of the error.

(62) "Single unit or unit dose package" means each dose of medication is individually packaged in a properly sealed and properly labeled container in accordance with the U.S. Pharmacopeia and professional standards.

~~(63) "Sitter" means an employee or volunteer who provides companionship and social interaction to a particular patient, usually on a private duty basis.~~

~~(64) "Social worker" means a person who meets the qualifications set forth in Rule .2802 of this Subchapter.~~

~~(65) "Speech and language pathologist" means a person licensed in the State of North Carolina as a speech and language pathologist in accordance with the provisions of G.S. 90, Article 22.~~

~~(66) "Supervisor-in-charge" (adult care home) means any employee to whom supervisory duties for the adult care home portion of a combination home have been delegated by either the administrator or director of nursing.~~

~~(67) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.~~

~~(68) "Unit dose system" means a drug distribution system in which each dose of medication is contained in, and administered from, single unit or unit dose packages.~~

~~(69) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.~~

~~(70) "Violation" means a finding which directly relates to a patient's or resident's health, safety or welfare, or which creates a substantial risk that death or serious physical harm will occur. It is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E -117 and 131D-21 or applicable state and federal laws, rules and regulations.~~

The following definitions will apply throughout this Subchapter:

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

(2) "Accident" means an unplanned event resulting in the injury or wounding, no matter how slight, of a patient or other individual.

(3) "Addition" means an extension or increase in floor area or height of a building.

(4) "Administrator" means a person licensed by the North Carolina Board of Examiners for Nursing Home Administrators who administers, manages, supervises, or is in general administrative charge of a nursing home, without regard to whether such individual has an ownership interest in such home or whether his or her functions and duties are shared with one or more individuals as defined in G.S. 90-274 (4).

(5) "Alteration" means any construction or renovation to an existing structure other than repair, maintenance, or addition.

(6) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Brain injury long term care is provided through a medically supervised interdisciplinary process and is directed toward maintaining the individual at the optimal level of physical, cognitive and behavioral functions.

(7) "Capacity" means the maximum number of patient or resident beds which the facility is licensed to maintain at any given time.

(8) "Combination facility" means a combination home as defined in G.S. 131E-101.

(9) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant

improvement in activities of daily living, including bathing, dressing, grooming, transferring, eating, and using speech, language or other communication systems. A comprehensive rehabilitation program utilizes a coordinated and integrated interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial, and cognitive deficits.

(10) "Department" means the North Carolina Department of Health and Human Services.

(11) "Director of nursing" means a registered nurse who has authority and direct responsibility for all nursing services and nursing care.

(12) "Discharge" means a physical relocation of a patient to another health care setting, the discharge of a patient to his or her home, or the relocation of a patient from a nursing bed to an adult care home bed or from an adult care home bed to a nursing bed.

(13) "Existing facility" means a facility currently licensed, a proposed facility, a proposed addition to a licensed facility, or a proposed remodeled licensed facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter, prior to the effective date of this Rule.

(14) "Facility" means a nursing facility or combination facility as defined in this Rule.

(15) "Incident" means any accident, event or occurrence which is unplanned, or unusual and has actually caused harm to a patient or has the potential for harm.

(16) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9, to establish inpatient rehabilitation beds and to provide a comprehensive inpatient rehabilitation program.

(17) "Interdisciplinary" means an integrated process involving representatives from disciplines of the health care team.

(18) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license to operate the facility has been issued. The licensee is the legal entity which is responsible for the operation of the business.

(19) "Medication error rate" means the measure of discrepancies between medication that was ordered for a patient by the health care provider and medication that is actually administered to the patient. The medication error rate is calculated by dividing the number of errors observed by the surveyor by the opportunities for error, multiplied times 100.

(20) "Misappropriation of patient property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent use of a patient's belongings or money without the patient's consent.

(21) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

(22) "New facility" means a proposed facility, a proposed addition to an existing facility, or a proposed remodeled portion of an existing facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter after the effective date of this Rule.

(23) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and provides nursing or nursing-related services to patients in a nursing home. A nurse aide is not a licensed health professional. Nursing

homes that participate in Medicare or Medicaid shall comply with 42 CFR Part 483.75(e) which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations may be accessed at http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08.

(24) "Nursing facility" means a nursing home as defined in G.S. 131E-101.

(25) "Patient" means any person admitted for nursing care.

(26) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing facility or combination facility.

(27) "Repair" means reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

(28) "Resident" means any person admitted for care to an adult care home part of a combination facility as defined in G.S. 131E-101.

(29) "Respite care" means services provided for a patient on a temporary basis, not to exceed 30 days.

(30) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117, 10A NCAC Chapter 13 Subchapters D and F, and 42 CFR Part 483, Requirements for States and Long Term Care Facilities.

(31) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.

(32) "Violation" means a failure to comply with the regulations, standards and requirements set forth in G.S. 131E -117 and 131D-21 or 10A NCAC Chapter 13 Subchapters D and F, or 42 CFR Part 483, Requirements for States and Long Term Care Facilities, which directly relates to a patient's or resident's health, safety, or welfare, or which creates a substantial risk that death or serious physical harm will occur.

History Note: *Authority G.S. 131E-104;*
RRC objection due to lack of statutory authority Eff. July 13, 1995;
Eff. January 1, ~~1996.~~ 1996;
Readopted Eff. July 1, 2016.

10A NCAC 13D .2402 is proposed for readoption with changes as follows:

10A NCAC 13D .2402 PRESERVATION OF MEDICAL RECORDS

(a) A facility shall keep medical records on file for five years following the discharge of an adult patient.

(b) Not withstanding Paragraph (c) of this Rule, if the patient is a minor when discharged from the nursing facility, ~~then~~ the records shall be kept on file until his or her 19th birthday and for the ~~timeframe~~ additional time specified in G.S. 1-17(b) for commencement of an action on behalf of a minor.

(c) If a facility discontinues operation, the licensee shall inform the Division of Health Service Regulation where its records are stored. ~~Records shall be stored with a business offering medical record storage and retrieval services for five years after the closure date.~~ For five years after a facility discontinues operations, records shall be stored with a business offering medical record storage and retrieval services.

(d) All medical records are confidential. ~~The~~ A facility shall ~~be compliant~~ comply with 42 CFR Parts 160, 162 and 164 of the Health Insurance Portability and Accountability Act.

(e) At the time of the inspection, ~~the~~ a facility shall inform the surveyor of the name of any patient who has denied the Department access to his or her medical record pursuant to G.S. 131E-105.

History Note: *Authority G.S. 131E-104; 131E-105;*
Eff. January 1, 1996.
Amended Eff. November 1, ~~2014.~~ 2014;
Readopted Eff. July 1, 2016.

10A NCAC 13D .2503 is proposed for readoption with changes as follows:

10A NCAC 13D .2503 USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

(a) Any facility that employs nurse practitioners or physician assistants shall maintain the following information for each nurse practitioner and physician assistant:

(1) verification of current approval to practice as a nurse practitioner by the Medical Board and Board of Nursing for each practitioner, or verification of current approval to practice as a physician assistant by the Medical Board for each physician assistant; and

(2) a copy of ~~instructions or written protocols~~ the job description or contract signed by the nurse practitioner or physician assistant and the supervising physicians.

(b) The privileges of the nurse practitioner or physician assistant shall be defined by the facility's policies and procedures and shall be limited to those privileges authorized in 21 NCAC ~~32M and 21 NCAC 36 .0800~~ 36 .0802 and .0809 for the nurse practitioner or 21 NCAC 32S .0212 for the physician assistant.

History Note: *Authority G.S. 131E-104;*
Eff. January 1, 1996;
Amended Eff. November 1, ~~2014.~~ 2014;
Readopted Eff. July 1, 2016.

10A NCAC 13D .3201 is proposed for readoption with changes as follows:

SECTION .3200 - FUNCTIONAL REQUIREMENTS

10A NCAC 13D .3201 REQUIRED SPACES

(a) ~~In a facility, 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. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and shall not be used as a multi-bedroom unless approved in advance by the Division as meeting the requirements of G.S. 131E, Article 9.~~ A facility shall meet the following requirements for bedrooms:

(1) Single bedrooms shall be provided with not less than 100 square feet of floor area;

(2) Bedrooms with more than one bed shall be provided with not less than 80 square feet of floor area per bed;

(3) Bedrooms shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the bedroom floor area required by Subparagraphs (1) and (2) of this Paragraph;

(4) Each bedroom shall be provided with one closet or wardrobe per bed. In nursing facilities and the nursing home portion of combination facilities, the closet or wardrobe shall have clothing storage space of not less than 36 cubic feet per bed with one-half of this space for hanging clothes. In the adult care home portion of a combination facility, the closet or wardrobe shall have clothing storage space of not less than 48 cubic feet per bed with one-half of this space for hanging clothes; and

(5) Floor space for closets, toilet rooms, vestibules or wardrobes shall not be included in the areas required by this Subparagraph.

(b) ~~The total space set aside for dining, activity, and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the adult care home portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total.~~ A facility shall meet the following requirements for dining, activity and common use areas:

(1) Nursing facilities and the nursing home portion of combination facilities shall have:

(A) a separate area or areas set aside for dining, measuring not less than 10 square feet per bed;

(B) a separate area or areas set aside for activities, measuring not less than 10 square feet per bed; and

(C) an additional dining, activity and common use area or areas, measuring not less than 5 square feet per bed. This area may be in a separate area or combined with the separate dining and activity areas required by Part (A) and (B) of this Subparagraph.

(2) The adult care home portion of combination facilities shall have:

(A) a separate area or area set aside for dining, measuring not less than 14 square feet per bed; and

(B) a separate area or areas set aside for activities, measuring not less than 16 square feet per bed.

(3) The dining room area or areas required by this Paragraph may be combined.

(4) The activity area or areas in nursing facilities and the nursing home portion of combination facilities shall not be combined with the activity area or areas in the adult care home portion of combination facilities.

(5) Floor space for physical, occupational and rehabilitation therapy shall not be included in the areas required by this Paragraph. Closets and storage units for equipment and supplies shall not be included in the areas required by this Paragraph.

(6) Dining, activity, and common use areas shall be designed and equipped to provide accessibility to both patients and residents confined to wheelchairs and ambulatory patients or residents.

(7) Dining, activity, and common use areas required by this Paragraph shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the required floor area required by Subparagraphs (1) and (2) of this Paragraph.

(8) For facilities designed with household units for 30 or fewer patients or residents, the dining and activity areas may be combined.

~~(c) In nursing facilities, included in the total square footage required by Paragraph (b) of this Rule, a separate dining area or areas with a minimum of 10 square feet per bed shall be provided and a separate activity area or areas with a minimum of 10 square feet per bed shall be provided. The remainder of the total required space for dining and activities square footage required by Paragraph (b) of this Rule may be in a separate area or combined with either of the separate dining and activity areas required by this Paragraph. If a facility is designed with patient and resident household units for 30 or less patients and residents, the dining and activity areas in the household units are not required to be separate.~~

~~(d) In combination facilities, included in the total square footage required by Paragraph (b) of this Rule, a separate dining area or areas with at least 14 square feet per adult care home bed shall be provided. The adult care home dining area or areas may be combined with the nursing facility dining area or areas. A separate activity area or areas for adult care home beds shall be provided with at least 16 square feet per adult care home bed. The adult care home activity area shall not be combined with the activity area or areas required for nursing beds.~~

~~(e) Dining, activity, and living space shall be designed and equipped to provide accessibility to both patients or residents confined to wheelchairs and ambulatory patients or residents. Dining, activity, and living areas required by Paragraph (b) of this Rule shall have windows with views to the outside. The gross window area shall not be less than eight percent of the floor area required for each dining, activity, or living space.~~

~~(f) Closets and storage units for equipment and supplies shall not be included as part of the dining, activity, and living floor space area required by Paragraph (b) of this Rule.~~

~~(g)~~ (c) Outdoor areas for individual and group activities shall be provided and shall be accessible to patients and residents with physical disabilities. In the adult care portion of a combination facility, a nursing unit with a control mechanism and staff procedures as required by Rule .3404(f) of this Subchapter shall have direct access to an outdoor area.

~~(h) For nursing beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 36 cubic feet of clothing storage space at least half of which is for hanging clothes.~~

~~(i) For adult care home beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each adult care home resident with a minimum of 48 cubic feet of clothing storage space at least half of which is for hanging clothes.~~

~~(j)~~ (d) Some means for patients and residents to lock personal articles within the facility shall be provided.

~~(k) A toilet room shall be directly accessible from each patient and resident room and from each central bathing area without going through the general corridor. One toilet room may serve two patient or resident rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient and resident room. One tub or shower shall be provided for each 15 beds not individually served. For each 120 beds or fraction thereof the following shall be provided:~~

~~(1) at least one bathtub or a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of patients and residents into the tub. All bathtubs must be accessible on three sides; and~~

~~(2) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use.~~

(e) A facility shall meet the following requirements for toilet rooms, tubs, showers and central bathing areas:

(1) A toilet room shall contain a toilet and lavatory. If a lavatory is provided in each bedroom, the toilet room is not required to have a lavatory.

(2) A toilet room shall be accessible from each bedroom without going through the general corridor.

(3) One toilet room may serve two bedrooms but not more than eight beds.

(4) One tub or shower shall be provided for each 15 beds not individually served by a tub or shower.

(5) For each 120 beds or fraction thereof, a central bathing area shall be provided with the following:

(A) a bathtub or a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of patients and residents into the tub. Bathtubs shall be accessible on three sides. Manufactured walk-in bathtubs or a similar manufactured bathtubs shall be accessible on two sides;

(B) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use. If a bathroom with a roll-in shower designed and equipped for unobstructed ease of shower chair entry adjoins each bedroom in the facility, the central bathing area is not required to have a roll-in shower;

(C) a toilet and lavatory; and

(D) a cubicle curtain enclosing the toilet, tub and shower. A closed cubicle curtain at one of these plumbing fixtures shall not restrict access to the other plumbing fixtures.

~~(l)~~ (f) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

(1) a medication preparation area ~~with a counter, a sink, a medication refrigerator, eye level medication storage, cabinet storage and a double locked narcotic storage area under the visual control of nursing staff. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;~~ with:

(A) a counter;

(B) a double locked narcotic storage area under the visual control of nursing staff;

(C) a medication refrigerator;

(D) eye-level medication storage;

(E) cabinet storage; and

(F) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin.

(2) a clean utility room ~~with a counter, sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;~~ with:

(A) a counter;

(B) storage; and

(C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin.

(3) a soiled utility room ~~with a counter, sink, and storage. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities.~~ with:

(A) a counter;

(B) storage; and

(C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities.

(4) a nurses' toilet and locker space for personal belongings;

(5) a soiled linen storage room. If the soiled linen storage room is combined with the soiled utility room, a separate soiled linen storage room is not required;

(6) ~~a~~ clean linen storage ~~room;~~ provided in one or more of the following:

(A) a separate linen storage room;

(B) cabinets in the clean utility room; or

(C) a linen closet.

(7) a nourishment station in an area enclosed with walls and doors ~~which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven, or hot plate. If a facility is designed with patient and resident household units, a patient and resident dietary area located within the patient and resident household unit may substitute for the nourishment station. The patient and resident dietary area shall include cooking equipment, a kitchen sink, refrigerated storage and storage areas and shall be for the use of staff, patients, residents, and families;~~ with:

(A) work space;

(B) cabinets;

(C) refrigerated storage; and

(D) a small stove, microwave, or hot plate.

(8) an audio-visual nurse-patient call system arranged to ensure that a patient's or resident's call in the facility ~~readily~~ notifies and directs staff to the location where the call was activated.

(9) a control point located no more than 150 feet from the furthest patient or resident bedroom door ~~with an area for charting patient and resident records, space for storage of emergency equipment and supplies, and nurse-patient call and alarm annunciation systems; and~~ with:

(A) an area for charting patient and resident records;

(B) space for storage of emergency equipment and supplies; and

(C) nurse patient call and alarm annunciation systems.

(10) a janitor's closet.

(g) If a facility is designed with patient or resident household units, a patient and resident dietary area located within the patient or resident household unit may substitute for the nourishment station. The patient or resident dietary area shall be for the use of staff, patients, residents, and families. The patient or resident dietary area shall contain:

(1) cooking equipment;

(2) a kitchen sink;

(3) refrigerated storage; and

(4) storage areas.

~~(m)~~ (h) Clean linen storage shall be provided in a separate room from bulk supplies. ~~Clean linen for nursing units may be stored in closed carts, cabinets in the clean utility room, or a linen closet on the unit floor.~~

~~(n)~~ (i) The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care, and employee areas shall be provided janitor's closets and may share one as a group.

~~(o)~~ (j) Stretcher and wheelchair storage shall be provided.

~~(p)~~ (k) ~~Bulk~~ The facility shall provide patient and resident storage ~~shall be provided~~ at the rate of ~~at least~~ not less than five square feet of floor area per licensed bed. ~~This storage space shall be either in the facility or within 500 feet of the facility on the same site. This storage space shall be in addition to the other storage space required by this Rule.~~ This storage space shall:

(1) be used by patients and residents to store out-of-season clothing and suitcases;

(2) be either in the facility or within 500 feet of the facility on the same site; and

(3) be in addition to the other storage space required by this Rule.

~~(q)~~ (l) Office space shall be provided for business transactions. Office space shall be provided for persons holding the following positions:

(1) administrator;

(2) director of nursing;

(3) social services director;

(4) activities director; and

(5) physical therapist.

~~(r)~~ (m) Each combination facility shall provide a minimum of one residential washer and residential dryer in a location accessible by adult care home staff, residents, and residents' families.

History Note: *Authority G.S. 131E-104; 42 CFR 483.70;*
Eff. January 1, 1996;
Amended Eff. August 1, 2014; October 1, ~~2008.~~ 2008;
Readopted Eff. July 1, 2016.

Appendix 2

North Carolina Department of Health and Human Services
Division of Health Service Regulation
Office of the Director

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

MEMORANDUM

TO: Office of State Budget & Management

FROM: Nadine Pfeiffer, DHSR Rule-making Coordinator

DATE: August 27, 2015

RE: Federal Certification for N.C. Medical Care Commission Rule Readoptions

Rule-making Coordinator's Certificate

As Required by GS 150B-19.1(g)
For Proposed Permanent and Temporary Rules Adopted to
Implement a Federal Law or which upon Receipt of Federal Funds is Conditioned

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Rule 10A NCAC 13D .2001 is proposed for readoption to be compatible with definitions found in the federal regulations for skilled nursing homes. These rules apply to licensed nursing homes in North Carolina that provide care for persons who have remedial ailments or other ailments for which medical and nursing care are indicated; who however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

Regulation by the State of North Carolina of skilled nursing facilities is subject to the provisions of 42 CFR 488.301. The readoption of the above-named rule is necessary to comply with the federal regulations for nursing home definitions found in §488.301.

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