

DHSR Adult Care Licensure Section

Fiscal Impact Analysis

Permanent Rule Adoptions without Substantial Economic Impact

**Agency:** North Carolina Medical Care Commission

**Contact Persons:** Nadine Pfeiffer, MCC/DHSR Rulemaking Coordinator, 919-855-3811  
Megan Lamphere, Chief, Adult Care Licensure Section, 919-855-3784  
Doug Barrick, Policy Coordinator, Adult Care Licensure Section, 919 - 855-3778

<b>Impact:</b>	Federal Government Impact:	No
	State Government Impact:	Yes
	Local Government Impact:	Yes
	Private Entities	Yes
	Substantial Economic Impact:	No

**Titles of Rule Changes and N.C. Administrative Code citations**

Rule Repeal:

10A NCAC 13F.0203 Persons Not Eligible for New Adult Care Home Licenses

10A NCAC 13F .0214 Suspension of Admissions

10A NCAC 13G .0214 Suspension of Admissions

Rule Readoptions (*See proposed text of these rules in Appendix*):

10A NCAC 13F .0207 Change of Licensee

10A NCAC 13F .1206 Marketing

10A NCAC 13G .0207 Change of Licensee

10A NCAC 13G .1207 Marketing

Authorizing Statutes: G.S. 131D-2.1; 131D- 2.4; 131D-2.5; 131D-4.5; 131D-2.16; 143B-165;  
131D-2.7

## Introduction and Background

Under the authority of 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 reports with classifications for the rules under 10A NCAC 13F Licensing of Adult Care Homes of Seven or More Beds and 10A NCAC 13G Licensing of Family Care Homes. The rules were classified in the reports as necessary with substantive public interest. Rules 10A NCAC 13F .0207 and .1206 and 10A NCAC 13G .0207 and .1207 are being presented for readoption with substantive changes. Rules 10A NCAC 13F .0203 and .0214 and 10A NCAC .0214 are being readopted as repeals and will not be discussed in this analysis.

Rules 10A NCAC 13F .0207 and .1206 and 13G .0207 were last amended in 2004. Rule 10NCAC 13G .1207 was last amended in 1984. Assisted Living regulatory policies and procedures and changes in technology have changed over the years since those amendment dates to allow for greater regulatory efficiency. The changes to these rules are intended to update the process that has been followed in recent years in the regulation of currently 595 adult care homes of seven or more beds for a total of 37,562 beds and 625 family care homes (2-6 beds) for a total of 3525 beds. A further intent of the changes is to make the rules of these two types of assisted living residences comparable if not the same for regulatory efficiency since they both house the same type of residents as permitted by law. Currently most of the rules for both types of residences are the same with the primary exception of staffing and physical plant requirements. The 13F and 13G rules are being reviewed, changes made and readoption proposed concurrently to assure this consistency.

## Rule Summary and Anticipated Fiscal Impact

**10A NCAC 13F .0207 Change of Licensee:** This rule specifies what is required of the current licensee of an adult care home and an entity applying for a license for the adult care home. The process involves notification of affected parties by the current licensee and submission of particular material by the prospective licensee for a change of license. Licenses are not transferable so a new license must be issued to the new owner of the adult care home business.

1. The new requirement in this proposed readoption is the 30-day notification of change of ownership. The rationale is as follows.

**Rationale:** The current licensee must notify Division of Health Service Regulation, the county department of social services and the residents or responsible persons within 30 days of the planned change of licensee. The rationale is to promote a smooth and well-planned change of ownership by assuring the change of ownership occurs by the date of change worked out between current owner and applicant licensee. The 30-day period will ensure adequate time for processing of the ownership change by the licensing agency and allow time for residents and responsible parties with the assistance of the county departments of social services to make plans for obtaining placement elsewhere if so desired or as determined necessary by admission policy of prospective licensee.

The current and historical context is that current and applicant licensees are notified by the Adult Care Licensure's Section's established policies of 30 days notice necessary to process the change

of ownership application. If that procedural guideline is not followed, the change of ownership may not occur at the expected time of closure on the sale of the business because processing of the application cannot necessarily be completed in a shorter timeframe, meaning, the change of ownership would be delayed. The benefit of the 30-day notice is to assure the timeframe for the actual change of ownership as agreed upon by the parties involved is met.

The consequence of not meeting the timeframe is the expense to the current owner in keeping the facility open and the lack of revenue by prospective owner. Reapplication for a license by the prospective licensee would require payment of licensure fees again. These costs to the current and prospective owners would result if sufficient notice, as required by either rule or agency policy/practice, to process the change of ownership was not given to the licensing agency.

Requiring a 30-day notice period does not in itself result in additional costs to either the licensing agency or the county department of social services. However, failure to notify residents at least 30 days prior to the change of ownership could create a hardship on residents, responsible parties, the facility and the county departments of social services in finding other placement for the residents if they cannot or choose not to remain at the facility under new ownership. Based on input from surveyors and other state licensure staff involved in the change of ownership, residents typically remain at the facility through and after the change of ownership with resident records remaining in the facility and being updated as needed by the new licensee. In this majority of cases the notification is significant in regards to assuring Residents' Right #1 in G.S. 131D-21, "To be treated with respect, consideration, dignity....." The negative result, from a licensure standpoint, of not abiding by the notice timeframe would be a citation of a deficiency in rule compliance though this would not result in a monetary penalty.

Fiscal Impact: There is no fiscal impact resulting from this proposed rule readoption.

2. The requirement for requesting an exemption from the Certificate of Need (CON) Section for a change of licensee when the building ownership does not change is proposed for deletion as indicated in what was Paragraph 3 of proposed rule readoption.

Rationale: This request for exemption was not a requirement of CON so was unenforceable and, therefore, needs deletion from rule.

Fiscal Impact: Not applicable.

3. Paragraph 3 of proposed rule adoption has technical changes in Parts (a) and (d) and specification of basic contents in the referenced license application.

Rationale: Name of application and website address in Part (a) require updating. Statutory reference in Part (d) requires updating due to reorganization of what was G.S. 131D-2 several years ago. The contents of the application are listed to meet OAH requirement of noting what named documents include content-wise.

Fiscal Impact: There is no fiscal impact to these rule changes since the changes are of a technical, non-substantive, nature.

4. The word “current” in Paragraph 3, Parts (b) and (c), is proposed for deletion to be replaced with the timeframe of “within the past 12 months.”

Rationale: The purpose of the change is to clearly relate what the licensing agency considers to be current according to county fire and sanitation inspection timeframes. This does not change the timeframe being required by current rule but specifies a time period since “current” is somewhat ambiguous. The change reflects what has been and continues to be the standard timeframe for inspections in practice.

Fiscal Impact: There is no fiscal impact to this change since the rule merely provides clearer language for a long-established standard for fire and sanitation inspections that has been followed by the licensing agency since 1984.

5. Paragraph (5) of this rule is proposed for deletion. It requires staff of the licensing agency and the county department of social services to conduct a survey of the facility following a change of ownership to assure the facility is operating per licensure requirements.

Rationale: This section of the rule has not been a part of the Adult Care Licensure Section’s survey or the county departments of social services’ adult services monitoring process since the star rating system for all adult care and family care homes became mandated by law in 2008 and annual surveys of all homes in 2009, the combination of which impacted the need for change of ownership surveys. Prior to that time, it was felt that a change of ownership survey was necessary because of the lack of periodic on-site surveys. As a result of the implementation of annual surveys and star rating follow-up surveys, the licensure staff switched to a document review of the change of ownership transaction and the readiness of the new owner to operate the facility and conducted this in-office. Due to surveys from the star rating system or the annual surveys, the new owner would be subject to an on-site survey of the facility within a matter of days, weeks or months depending on the schedule of annual surveys and follow-up surveys from any previous owner violations. This change in policy was made to streamline the CHOW process and optimize staff resources by incorporating the new ownership surveys into the annual and follow-up survey process. The primary benefit was better use of the limited staff time and resources.

Fiscal Impact: The deletion of the change of ownership survey by the Adult Care Licensure Section and the county department of social services’ adult home specialists (AHS) results in a cost savings for the state and counties as follows.

### **Salaries and Wages:**

#### **Assumptions:**

- Fringe benefits are equal to 37% of annual salary costs for state employees and 33.3% of annual salary costs for county employees.
- Annual salary based on 2040 working hours
- Travel costs of \$0.58/mile (based on 2019 IRS reimbursement rates)
- State and county salaries are not likely to increase more than average inflation.

- State surveyors are home-based, living in the region of the facilities they survey. Adult Home Specialists visit facilities in their counties.

<b>Table 1 - Wage Estimates</b>	<b>Salary</b>	<b>Fringe Benefits</b>	<b>Total Cost</b>
ACLS Surveyor, FSC I	\$ 58,070	\$ 21,486	\$ 79,556
County Adult Home Specialist	\$ 45,000	\$ 14,985	\$ 59,985

<b>Table 2 - Adult Care Home Change of Ownership Surveys</b>	
Average Annual # of Adult Care Home Changes of Ownership (CHOW)	48
<b>Survey Requires:</b>	
2 State Surveyors for 2 Days	\$ 1,224
Travel Costs - State Employees (100mi/day)	\$ 232
1 County Adult Home Specialist for 2 Days	\$ 461
Travel Costs - County Employee (40mi/day)	\$ 46
Total Costs to State	\$ 69,885
Total Costs to Counties	\$ 24,376
Total Costs for FCH CHOW Surveys	\$ <b>94,261</b>

<b>Table 3 - Family Care Home Change of Ownership Surveys</b>	
Average Annual # of Family Care Home Changes of Ownership (CHOW)	59
<b>Survey Requires:</b>	
1 State Surveyor for 1 Day	\$ 306
Travel Costs - State Employees	\$ 58
1 County Adult Home Specialist for 1 Day	\$ 231
Travel Costs - County Employee	\$ 23
Total Costs to State	\$ 21,475
Total Costs to Counties	\$ 14,981
Total Costs for FCH CHOW Surveys	\$ <b>36,456</b>

**Total fiscal impact (cost savings) of no CHOW surveys for state and county:**

**\$94,261 + 36,456 = \$130, 717 in annual cost savings**

These savings will occur every year going forward. Future annual cost savings will be dependent on wage and travel reimbursement changes, as well as the number of CHOW surveys that would otherwise have to be done.

**10A NCAC 13G .0207 Change of Licensee:** The rule specifies certain procedures to be followed when a change of business ownership of a family care home is planned in conjunction

with a prospective licensee to take over the business and operation of the family care home. The rule change reflects the current process and procedures for change of ownership that have been in effect for several years.

Rationale: The changes proposed are the deletion of outdated text in Paragraphs (1) and (2), the result of changes in the licensure change process that is the same for adult care homes; the deletion of Paragraphs (3) and (4) which are part of the internal procedures and licensing process of the Adult Care Licensure Section of the Division of Health Service Regulation; and deletion of Paragraph (5) which is covered in the NC Building Code. The intent of the agency is to update the rule requirements for the change of licensee process to bring them in line with current Division standards of practice and align these requirements to the requirements for adult care homes. The agency feels that there is no need for different standards of practice to be applied to family care homes versus adult care homes as the residents are substantially similar. This action will provide consistency to licensure practice for assisted living facilities and avoid outdated practice, particularly involving the county departments of social services, that creates an extra, unnecessary layer of involvement in the change of licensee process.

The process involving county departments of social services is unnecessary because the counties simply collected the information from the prospective licensee and forwarded it to the Adult Care Licensure Section without taking any action on it other than assuring its completeness. The CHOW process is streamlined by direct submittal of the application by the prospective licensee rather than dealing with the variable timeframes of almost 100 counties in submitting the applications. This will also benefit the licensee because their application will be received by DHHS in a more timely fashion. Since the text of proposed readoption of 10A NCAC 13F .0207 is being incorporated into 13G .0207, the rationale as stated for 13F .0207 in Parts 1 and 4 above applies to this rule readoption.

Fiscal Note: The only fiscal impact of this rule would be cost savings of the county departments of social services in not mailing the change of licensee application materials to the Division for review and licensing and the cost to the applicant licensee of the mailing of those materials directly to the Division. Currently the prospective licensees mail or hand deliver change of license applications to the county departments of social services. The assumption is that the cost of mailing by the county and the prospective licensee is the same and is minimal.

Average # of family care home CHOW's, 2016-2018: 59

Cost of mailing CHOW application by facility is minimal and cost savings of county not mailing applications is minimal as well.

The cost savings of adult home specialists of the county department of social services not having to meet with residents is not quantifiable because of great diversity in number of residents per facility. Also, part of the job responsibilities of adult home specialists already is assistance with resident placement so, if residents wanted to move before a CHOW, they would assist as needed.

**10A NCAC 13F .1206 and 13G .1207 Marketing:** These rule changes institute the same advertising requirements for both adult care homes and family care homes that address how a facility can market itself if it chooses to do so. If a facility wishes to market itself for advertising

purposes, it must present itself to the public under its correct licensure classification as it appears on its license. This requirement is to ensure that facilities are not misrepresented to the public for services and care provided that they are not licensed to provide. The wording about types of advertising is proposed for deletion to update the rule in allowing for other forms of marketing available other than hard copies of printed texts. The rationale for the use of marketing instead of advertising is as follows.

Rationale: Marketing is a broader term than advertising and includes the development of a strategy and the preparation and dissemination of an advertising product. The end product of marketing is advertising so the change in rule to address marketing is inclusive of advertising but covers any public relations campaigns and other factors that lead to the final advertising product. Marketing captures the whole process leading up to advertising in which the public may become aware of the product or entity that is to be advertised. There would not be advertising without some initial marketing, whether a lengthy or brief process. While the term advertising, therefore, encompasses the process leading up to it, using the term marketing clarifies that it is a process and incorporates more than just a visual or verbal advertisement. While obvious from the rule language, marketing by the facility is a choice but naming of the entity by licensure category if the choice to market the category is made, is a requirement. There's an assumption that most of the 1220 homes, both family care and adult care, advertise in some way, if only by a sign on the property identifying the home or automatic voice messages describing the home. The other assumption is that, if homes advertise, the cost of marketing is included, whether it be extensive or minimal. The cost factor is incorporated in either case. The benefit is that proper classification of the facility is considered and communicated in the process leading up to and including advertising, so that the accuracy of the home's licensure category in advertising and public relations throughout the process is ensured.

Fiscal Impact: This proposed rule readoption carries no determinable or quantifiable fiscal impact from current rule based on change in terms from advertising to marketing.

#### Conclusion:

The proposed rule readoptions in this report are intended to update rules to bring them into line with current licensure processes and procedures, update statutory references, clarify wording and unify family care home and adult care home rules as much as possible for efficient and effective regulation since both types of assisted living facilities are intended by law to serve residents with similar needs for care and services. This ensures consistency of regulation of facility types determined by capacity.

Summary Impact Table	
State Government	Annual savings of \$94,261 based on travel costs and staff time; also unquantifiable savings related to clarity of regulations
Local Government	Annual savings of \$36,456 based on travel costs and staff time; unquantifiable savings related to streamlined application process
Private Sector	Unquantifiable benefits related to increased clarity regarding the application process, time savings related to family home application process, decreased administrative burden in not spending time on additional CHOW licensure surveys

The overall fiscal impact of these rule readoptions is a moderate cost savings to the state and county departments of social services as a result of not requiring change of ownership surveys by state and county staff, thereby resulting in wage and travel savings. These rule readoptions and amendments are primarily serving the purpose of updating rules to concur with licensure practice of the past 10 years resulting from law and policy changes impacting process and procedures of the Adult Care Licensure Section of the Division of Health Service Regulation. The changes provide clear guidance based on current licensure practice to adult care home and family care home licensees to ensure a more streamlined licensure process while continuing to ensure safe environments and practices for residents of these facilities such as requiring adequate notices of changes in facility ownership. Fiscal impact is not substantial.



## Appendix

10A NCAC 13F .0207 is proposed for readoption with substantive changes as follows:

### 10A NCAC 13F .0207 CHANGE OF LICENSEE

When a licensee plans to sell the adult care home business, the following procedure is required. Prior to the sale of an adult care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social ~~services~~ services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.
- (2) If the prospective licensee plans to purchase the building, the prospective licensee shall provide the Healthcare Planning and Certificate of Need Section of the Division of Health Service Regulation with prior written notice as required by G.S. ~~13E-184(a)(8)~~ 131E-184(a)(8) prior to the purchase of the building.
- ~~(3) If the licensee is changing but the ownership of the building is not, the applicant for the license shall request in writing an exemption from review from the Certificate of Need Section.~~
- ~~(4)~~ (3) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
  - (a) the ~~Initial License Application~~ Change Licensure Application for Adult Care Home (7 or more Beds) ~~which that~~ is available on the internet website, ~~<http://facility-services.state.nc.us/gepage.htm>~~, [www2.ncdhhs.gov/dhsr/acls/pdf/acchgapp.pdf](http://www2.ncdhhs.gov/dhsr/acls/pdf/acchgapp.pdf) at no cost ~~or from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708;~~ and includes the following:
    - (i) facility administrator and building owner information;
    - (ii) operation disclosure including new licensee information and management company, if any; and
    - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
  - (b) a ~~current~~ fire and building safety inspection report from the local fire ~~marshal;~~ marshal dated within the past 12 months;
  - (c) a ~~current~~ sanitation report from the sanitation division of the county health ~~department;~~ department dated within the past 12 months; and
  - (d) a nonrefundable license fee as required by ~~G.S. 131D-2(b)(1).~~ G.S. 131D-2.5.
- ~~(5) Following the licensing of the facility to the new licensee, a survey of the facility shall be made by program consultants of the Division of Health Service Regulation and an adult home specialist of the county department of social services.~~

*History Note:* Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. April 1, 1984;  
Temporary Amendment Eff. September 1, 2003; July 1, 2003;  
Amended Eff. June 1, ~~2004~~ 2004;  
Readopted Eff. January 1, 2020.

10A NCAC 13F .1206 is proposed for readoption with substantive changes as follows:

**10A NCAC 13F .1206 ~~ADVERTISING~~ MARKETING**

~~The~~ An adult care home may ~~advertise~~ market provided:

- (1) ~~The~~ the name used is as it appears on the ~~license~~ license;
- (2) ~~Only~~ only the services and accommodations for which the home is licensed are ~~used~~ used; and
- (3) ~~The~~ the home is ~~listed under proper classification in telephone books, newspapers or magazines.~~ classified by licensure status.

*History Note:* Authority G.S. 131D-2.1; 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Temporary Amendment Eff. July 1, 2003;  
Amended Eff. July 1, ~~2004~~ 2004;  
Readopted Eff. January 1, 2020.

10A NCAC 13G .0207 is proposed for readoption with substantive changes as follows:

**10A NCAC 13G .0207 ~~CHANGE OF LICENSEE~~**

~~When a licensee wishes to sell or lease the family care home business, the following procedure is required:~~

- (1) ~~The licensee shall notify the county department of social services that a change is desired. When there is a plan for a change of licensee and another person applies to operate the home immediately, the licensee shall notify the county department and the residents or their responsible persons. The county department shall talk with the residents, giving them the opportunity to make other plans if they so desire.~~
- (2) ~~The county department of social services shall submit all forms and reports specified in Rule .0204 (b) of this Subchapter to the Division of Health Service Regulation.~~

- ~~(3) The Division of Health Service Regulation shall review the records of the facility and may visit the home.~~
- ~~(4) The licensee and prospective licensee shall be advised by the Division of Health Service Regulation of any changes which must be made to the building before licensing to a new licensee can be recommended.~~
- ~~(5) Frame or brick veneer buildings over one story in height with resident services and accommodations on the second floor shall not be considered for re licensure.~~

Prior to the sale of a family care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.
- (2) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
  - (a) the Change Licensure Application for Family Care Home (2 to 6 Beds) that is available on the internet website, [www2.ncdhhs.gov/dhsr/acls/pdf/fchgapp.pdf](http://www2.ncdhhs.gov/dhsr/acls/pdf/fchgapp.pdf) at no cost and includes the following:
    - (i) facility, administrator and building owner information;
    - (ii) operation disclosure including new licensee information and management company, if any; and
    - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
  - (b) a fire and building safety inspection report from the local fire marshal dated within the past 12 months;
  - (c) a sanitation report from the sanitation division of the county health department dated within the past 12 months; and
  - (d) a nonrefundable license fee as required by G.S. 131D-2.5.

*History Note: Authority G.S. 131D-2.4; 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 1, 1990; April 1, 1984;  
Temporary Amendment Eff. September 1, 2003;  
Amended Eff. June 1, 2004; 2004;  
Readopted Eff. January 1, 2020.*

10A NCAC 13G .1207 is proposed for readoption with substantive changes as follows:

**10A NCAC 13G .1207    ADVERTISING MARKETING**

~~The administrator~~ A family care home may use ~~acceptable methods of advertising~~ market provided:

- (1)     ~~The~~ the name used is as it appears on the ~~license.~~ license;
- (2)     ~~Only~~ only the services and accommodations for which the home is licensed are ~~used.~~ used; and
- (3)     ~~The~~ the home is ~~listed under proper classification in telephone books, newspapers or magazines.~~  
classified by licensure status.

*History Note:*     *Authority G.S. 131D-2.1; 131D-2.16; 143B-165;*

*Eff. January 1, 1977;*

*Readopted Eff. October 31, 1977;*

*Amended Eff. April 1, ~~1984.~~ 1984;*

*Readopted Eff. January 1, 2020.*