

DHSR Adult Care Licensure Section
Fiscal Impact Analysis
Permanent Rule Readoption and Amendment without Substantial Economic Impact

Agency: North Carolina Medical Care Commission

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Impact:

Federal Government: No
State Government: No
Local Government: No
Private Entities: Yes
Substantial Impact: No

Titles of Rule Changes and N.C. Administrative Code Citation

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

10A NCAC 13G .0402 Qualifications of Supervisor-In-Charge
10A NCAC 13G .0403 Qualifications of Medication Staff
10A NCAC 13G .0405 Test for Tuberculosis
10A NCAC 13F .0403 Qualifications of Medication Staff
10A NCAC 13F .0406 Test for Tuberculosis

Authorizing Statutes: G.S. 131D-2.16; 131D-4.5; 131D-4.5B, 143B-165

Introduction and Background

The Adult Care Licensure Section is proposing to increase the minimum age of a Supervisor-In-Charge of a family care home from 18 years to 21 years old in an effort to improve the quality of care and services and improve the overall management of the family care homes. A proposed change in education will end the use of the alternative exam to better reflect current industry standards. Additional technical changes are proposed for clarity and consistency but do not affect current operations. The proposed changes will have limited fiscal impact on family care homes as they are privately owned and are mostly in current practice based on recent surveys. The proposed changes will have no fiscal impact on the Adult Care Licensure Section.

Under the authority of G.S. 150B-21.3A, Periodic review 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 10 NCAC 13G Licensing of Family Care Homes. The rules were classified in the reports as necessary with substantive public interest. Rules 10A NCAC 13F .0403, 13G .0402 and .0403 are being

presented for readoption with substantive changes. Rule 13G .0405 is being presented for readoption without substantive changes and therefore not discussed in this analysis per statute. The following rule was not identified for readoption with substantive changes based on public comment but is being proposed for amendment to correlate with the 13G rule of the same title and similar content being proposed for readoption: 10A NCAC 13F .0406. Most of the rules for both types of assisted living residences, adult care homes of seven beds or more and family care homes, are the same with the primary exception of staffing and physical plant requirements since they serve the same population based on need for care and services. Therefore, the 13F rules corresponding to the 13G rules being proposed for readoption with substantive changes are being amended concurrently to assure this traditional consistency. The rule proposed for amendment, while not receiving comment for substantive change, is being amended for clarification and updating purposes.

Rules Summary and Anticipated Fiscal Impact

10A NCAC 13F .0406 Test for Tuberculosis: This rule specifies who is required to obtain a test for tuberculosis prior to employment or living in an adult care home. The rule addresses the testing of staff of licensed assisted living facilities for tuberculosis disease and documentation of that testing.

1. In Paragraph (a) and Paragraph (b), the rule as currently written requires any live in non-residents to obtain a tuberculosis test. The proposed language clarifies the rule as any person living in the home is required to obtain a test for tuberculosis.

Rationale: According to the North Carolina Tuberculosis Control Program, tuberculosis is a “communicable, potentially deadly disease that usually affects the lungs but can attack other parts of the body as well. It is spread when a person with an active case of TB breathes out the disease-causing bacteria, which are then inhaled by another person”. The proposed language does not change the current requirement to test for tuberculosis for people living in the home. The proposed rule language simplifies the language of “live in non-resident” to “persons” living in the home must obtain a test for tuberculosis. The proposed change will avoid any ambiguity while it does not signify additional persons to be tested from what the rule currently requires. Testing for tuberculosis will help to protect everyone living in adult care home. The rule has no impact. Only technical changes were made.

Fiscal Impact: None

2. The rule as written provides a mailing address for copies of the rule 10A NCAC 41A .0205 and subsequent amendments. The proposed language is an update to remove the mailing address and provide the website address where the rule and subsequent amendments are available free of charge.

Rationale: The proposed language updates the access to copies of 10A NCAC 41A .0205 and subsequent amendments.

Fiscal Impact: None

10A NCAC 13F .0403 and 10A NCAC 13G .0403 Qualifications of Medication Staff: This rule specifies the qualifications of staff responsible for administering medications and their direct supervisors.

1. In Paragraph (a), the reference to Subchapter Rule .0503 is proposed for deletion since the implementation of NC Gen. Stat. § 131D-4.5B regarding medication aides training and competency

evaluation requirements. Paragraph (a) will reference NC Gen. Stat. § 131D-4.5B since the statute supersedes the rule. The rule has no impact. Changes to the rule are proposed to bring the rule in alignment with the statute and make technical changes.

Fiscal Impact: None

2. In Paragraph (a) and Paragraph (c), the current rule lists qualification requires for staff who directly supervise medication administration. The proposed language changes the reference from staff who directly supervise medication administration to direct supervisors.

Rationale: The change reorganizes the language in the previous rule and provides clarify by referring to staff who directly supervise medication administration as direct supervisors. The proposed language does not change any current requirements.

Fiscal Impact: None

10A NCAC 13G .0402 Qualifications of Supervisor-In-Charge: This rule addresses the qualifications of supervisors working in licensed adult care homes categorized as family care.

1. Changes to the rule are proposed to bring the rule in alignment with the repeal of 10A NCAC 13G .0401 and make technical changes. Technical changes are proposed to simplify the rule text. The proposed changes in Item (1) removes the requirement for family care home providers to utilize a specific employment application for potential supervisory employees. The change proposes a deletion of Item (1) as written. An objection was raised to this rule on January 18, 1991. This objection has been resolved as a result of NC Gen. Stat. § 131D-4.5(3) Rules adopted by Medical Care Commission. The changes proposed have no impact.

Rationale: The proposed change allows family care home providers to utilize applications that align with their policies and hiring practices and does not limit them to a utilizing the DSS-1862 which was developed in the year of 1987.

Fiscal Impact: None

2. A new Item (1) is proposed to this rule to require the age of family care home employees working as a Supervisor-In-Charge change from 18 years old to 21 years of age of older when hired.

Rationale:

The Adult Care Licensure Section is proposing to increase the staff qualifications of the Supervisor-in-Charge from a minimum age of 18 years to 21 years old. The Supervisor-in-Charge is often the only staff member in the facility to provide care to two to six residents with varied cognitive, medical and physical needs. The amount of care needed for residents of adult care homes has increased over time and at least 54 instances of management-related violations resulting in serious risk or harm occurred in the last three years. The Adult Care Licensure Section is proposing the change in staff qualification in an effort to improve the quality of care and services and improve the overall management of the family care homes.

The increase in age from 18 years old to at least 21 years old is a trend occurring in hiring practices of family care home providers. Based on a recent survey of family care homes, 96% of employees hired within the past 3 years as Supervisors-in-Charge were at least 21 years or older. Family care homes are often staffed with one staff member who provides care and supervision to two to six residents. The staff is

responsible for performing multiple tasks for residents which include administering medications, meal preparation, assistance with activities of daily living and ensuring safety. The proposed change increases opportunities for potential Supervisors-in-Charge to gain work experiences prior to caring for a vulnerable population.

Fiscal Impact:

Currently, approximately 4% of new hires for a supervisor in charge (SIC) are under age 21. Increasing the minimum age of a SIC would disqualify these applicants, a lost employment opportunity. The change could also increase hiring costs for care facilities.

There are currently 577 licensed family care home, and hourly rates for hiring SICs vary. According to respondents of the survey, the average hourly rate when hiring a SIC ranges from \$10.10 for age 18 to an average of \$11.88 for age 21. Based on the age at hire, the difference in hourly rate is \$1.78 or \$3,702.40 annually at 40 hours per week for 52 weeks.

Twenty-one (21) years and older	\$11.88 average hourly rate
Eighteen (18) years old	\$10.10 average hourly rate

Assuming the individual was hired at 18, the cumulative cost increase over the three year period could average \$11,107.20 per hire. Roughly 4% of new hires in the recent past were under age 21. This analysis assumes this proportion of hires under age 21 would remain constant in absence of the proposed rule change. Respondents to the survey reported 100% of Supervisors-in-Charge are currently over 18 years old. Therefore, the proposed rule change affects only future hires.

3. The change to Paragraph 2 proposes an update to the educational qualification for a Supervisor-in-Charge by ending the use of an alternative exam.

Rationale: As the rule is currently written, the educational qualification for hiring a Supervisor-in-Charge are be a high school graduate, be certified under the GED Program or pass an alternative exam established by the Department. Review of the data provided by the NC Division of Health Service Regulation, Health Care Personnel Education and Credentialing Section, reveals a 97% decrease in test takers over the past 3 years.

Year 2017 - Total Test Takers for Alternative Exam	296
Year 2018 - Total Test Takers for Alternative Exam	34
Year 2019 - Total Test Takers for Alternative Exam	9

Based on a recent survey, 100% of Supervisors-in-Charge hired in the past three years have at least a GED. The survey also revealed 93% of Supervisors-in-Charge currently employed have at least a GED. This is based on family care home policies and preferences for Supervisor-in-Charge to have a GED or higher level of education. The educational changes are proposed to better reflect current industry standards. Requiring a GED or high school diploma will have minimum impact because the industry is already requiring at least a GED as part of general hiring practices.

Appendix 1: Proposed Rule Text

10A NCAC 13F .0403 is proposed for readoption with substantive changes as follows:

10A NCAC 13F .0403 QUALIFICATIONS OF MEDICATION STAFF

- (a) Adult care home staff who administer medications, hereafter referred to as medication aides, and ~~staff who directly supervise the administration of medications~~ their direct supervisors shall ~~have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule 10A NCAC 13F .0503 prior to the administration or supervision of the administration of medications.~~ complete training, clinical skills validation, and pass the written examination as set forth in G.S. 131D-4.5B.
- (b) ~~Medication aides and their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .0503 of this Section.~~
- (c) Medication aides and ~~staff who directly supervise the administration of medications,~~ their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; G.S. 131D-4.5B; 143B-165;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2004;
Amended Eff. July 1, ~~2005~~, 2005;
Readopted Eff. July 1, 2021.*

10A NCAC 13F .0406 is proposed for amendment as follows:

10A NCAC 13F .0406 TEST FOR TUBERCULOSIS

- (a) Upon employment or living in an adult care home, the ~~administrator and administrator,~~ all other ~~staff~~ staff, and any ~~live-in non-residents~~ persons living in the adult care home shall be tested for tuberculosis disease in compliance with control measures adopted by the Commission for Public Health as specified in 10A NCAC 41A ~~.0205~~ .0205, including subsequent amendments and editions. Copies of the rule ~~are available at no charge by contacting the Department of Health and Human Services Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902.~~ may be accessed at <http://reports.oah.state.nc.us/ncac.asp> at no charge.
- (b) There shall be documentation on file in the adult care home that the administrator, all other ~~staff~~ staff, and any ~~live-in non-residents~~ persons living in the adult care home are free of tuberculosis ~~disease that poses a direct threat to the health or safety of others.~~ disease.

History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Temporary Amendment Eff. September 1, 2003; July 1, 2003;
Amended Eff. June 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; 2018;
Amended Eff. July 1, 2021.

10A NCAC 13G .0402 is proposed for reoption with substantive changes as follows:

10A NCAC 13G .0402 QUALIFICATIONS OF SUPERVISOR-IN-CHARGE

The ~~supervisor in charge~~ supervisor-in-charge, who is responsible to the administrator for carrying out the program in ~~the a~~ family care home in the absence of the ~~administrator. All of administrator, shall meet~~ the following ~~requirements must be met:~~ requirements:

- ~~(1) — The applicant must complete the Application for Supervisor in Charge (DSS 1862);~~
- ~~(1) be 21 years or older, employed on or after the effective date of this Rule;~~
- ~~(2) The qualifications of the administrator and co-administrator referenced in Paragraphs (2), (5), (6), and (7) of Rule .0401 of this Subchapter shall apply to the supervisor in charge. The supervisor in charge the supervisor-in-charge, (employed employed on or after August 1, 1991) must meet a minimum educational requirement by being at least 1991, shall be a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health and Human Services. Documentation that these qualifications have been met must be on file in the home prior to employing the supervisor in charge; Program or passed the alternative examination established by the Department of Health and Human Services prior to the effective date of this Rule; and~~
- ~~(3) — The supervisor in charge must be willing to work with bonafide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements;~~
- ~~(4) (3) The supervisor in charge must verify that he earns earn 12 hours a year of continuing education credits related to the management of domiciliary adult care homes and care of aged and disabled persons in accordance with procedures established by the Department of Health and Human Services; persons.~~
- ~~(5) — When there is a break in employment as a supervisor in charge of one year or less, the educational qualification under which the person was last employed will apply.~~

History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
ARRC Objection June 16, 1988;
Amended Eff. July 1, 1990; December 1, 1988; April 1, 1987; January 1, 1985;
ARRC Objection Lodged January 18, 1991;

Amended Eff. August 1, ~~1991~~, 1991;

Readopted Eff. July 1, 2021.

10A NCAC 13G .0403 is proposed for readoption with substantive changes as follows:

10A NCAC 13G .0403 QUALIFICATIONS OF MEDICATION STAFF

(a) Family care home staff who administer medications, hereafter referred to as medication aides, and ~~staff who directly supervise the administration of medications~~ their direct supervisors shall ~~have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule .0503 of this Subchapter prior to the administration or supervision of the administration of medications.~~ complete training, clinical skills validation, and pass the written examination as set forth in, G.S. 131D-4.5B. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.

~~(b) Medication aides and their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .0503 of this Subchapter.~~

~~(c)~~(b) Medication aides and ~~staff who directly supervise the administration of medications,~~ their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

History Note: Authority G.S. 131D-2.16; 131D-4.5; G.S. 131D-4.5B; 143B- 165;

Temporary Adoption Eff. January 1, 2000; December 1, 1999;

Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2004;

Amended Eff. July 1, ~~2005~~, 2005;

Readopted Eff. July 1, 2021.

10A NCAC 13G .0405 is proposed for readoption without substantive changes as follows:

10A NCAC 13G .0405 TEST FOR TUBERCULOSIS

(a) Upon employment or living in a family care home, the administrator, all other ~~staff~~ staff, and any ~~live-in non-residents~~ persons living in the family care home shall be tested for tuberculosis disease in compliance with control measures adopted by the Commission for Public Health as specified in 10A NCAC 41A ~~.0205~~ .0205, including subsequent amendments and editions. Copies of the rule ~~are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902.~~ may be accessed at <http://reports.oah.state.nc.us/ncac.asp> at no charge.

(b) There shall be documentation on file in the family care home that the administrator, all other ~~staff~~ staff, and any ~~live-in non-residents~~ persons living in the family care home are free of tuberculosis ~~disease that poses a direct threat to the health or safety of others.~~ disease.

History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;
Eff. January 1, 1977;
Amended Eff. October 1, 1977; April 22, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. December 1, 1993; April 1, 1984;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, ~~2004~~, 2004;
Readopted Eff. July 1, 2021.