

# **Fiscal Impact Analysis**

## **NC Division of Health Service Regulation**

**Agency Proposing Rules:** DHHS, Division of Health Service Regulation (DHSR)

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**Title of Rules and Statutory Citation:**

Overnight Respite in Certified Adult Day Care Programs 10A NCAC 13E .0101-.0901 (see proposed text in Appendix 1)

**Statutory Authority for Rule Adoption:** G.S. 131D-6.1

**Fiscal Impact:**

Local Government:	None
State Government:	Yes
Private Sector Entities	Yes
Substantial Economic Impact:	No

**I. Introduction**

The overnight respite program provides caregivers the benefit of much needed respite breaks from their role of constant caregiving for a loved one with a disability or medical condition. This may be for one night or for multiple nights. Participation in the overnight respite program is not mandatory but is strictly voluntary.

**Background and Rationale for the Rule Change**

The intent of the rule change is to provide caregiving relief and space from caregiving and the peace of mind of a safe setting and care during the respite period. Allowing adult day care facilities to offer overnight respite programs provides caregivers with additional care setting options, enhances the continuity of care for participants, and allows adult day care providers to expand their services.. It cannot be determined if these rules will improve the availability of overnight respite service in the state or whether ADC facilities will draw clients from existing providers which would mainly be current licensed adult care home and family care homes who utilize the respite rule in their regulations. There is a valid assumption that ADC facilities may attract overnight respite applicants because of a less cumbersome application process.

The Division of Health Service Regulation was named as the regulatory agency for a three year pilot program that allows a total of four certified adult day care programs (ADC) to provide overnight respite programs (ORP) for adults. The Secretary was named in the law as having the duty and authority to adopt rules to implement the three year pilot program. The legislature authorized the continuation of the program based on the success of the pilot programs whose rules, 10A NCAC 14D .0101-.0901, went into

effect as temporary rules on January, 1, 2012 and were replaced by permanent rules on September 30, 2012. North Carolina Session Law 2015-241 Section 12G.3(a) amended N.C.G.S. § 131D by adding Section 6.1, Licensure to Offer Overnight Respite; Rules; Enforcement Programs, which created a new licensure program to be regulated by DHSR. Also as a result of North Carolina Session Law 2015-241 Section 12G.3(a), the three year pilot sunsets on June 30, 2017 or once the licensing of overnight respite programs is operational by DHSR, whichever occurs earlier.

#### Funding for Overnight Respite Programs

Although this is a benefit to some clients and families, others have not been able to afford this service as it has been a private out-of-pocket expense during the pilot, and will primarily continue as such. Medicaid funds cannot be spent on the overnight respite services with the exception of two waiver programs: CAP-DA (Community Alternative Program for Disabled Adults) and the Innovations waiver. The CAP case manager will be able to authorize part of the CAP money for the recipient to utilize respite services depending on available funds and the recipient's needs. The same is true for potential recipients who are covered under the Innovations Waiver through the mental health system. If the Local Management Entity/Managed Care Organization approves the overnight respite services, some of the money could be directed to the ORP, but their total amount budgeted per person will not initially increase to cover this additional service. Medicaid spending on ORP through either waiver will be fiscally neutral.

## **II. Summary and Purpose of Proposed Rule Adoptions**

#### Section .0100, Definitions

- Rule 10A NCAC 13E Section .0101, Definitions, defines commonly used words and terms throughout the rules.

#### Section .0200, Licensing

The proposed rules governing the licensing of overnight respite programs in adult day care and adult day health programs, 10A NCAC 13E .0101-.0901, are based on the 14D rules applicable to the pilot programs with some revisions made based on the experience of the pilot programs.

- Rule 10A NCAC 13E .0201, Applying for a License to Provide Overnight Respite Services, addresses what is to be submitted to the Department in applying for a license, being certified as an ADC provider and pre-approval visit.
- Rule 10A NCAC 13E .0202, Persons not Eligible for Overnight Respite Services Licenses, addresses conditions for denial of license and time frames for re-application in the case of denial.
- Rule 10A NCAC 13E .0203, The License, addresses posting of license, effective date of license, non-transferability and termination.
- Rule 10A NCAC 13E .0204, Renewal of License, addresses annual renewal, exceptions, time frame for submitting renewal application and contents of application.
- Rule 10A NCAC 13E .0205, Closing of Overnight Respite Services, addresses notification of the Department and caregivers of the closing of the program.
- Rule 10A NCAC 13E .0206, Denial, Suspension and Revocation of License, addresses the process, conditions, and notification for these regulatory actions and notification by facility of participants and caregivers.
- Rule 10A NCAC 13E .0207, Suspension of Admissions, addresses right to suspend based on law, notification of licensee, effective dates and conditions for suspension.
- Rule 10A NCAC 13E .0208, Appeal of Licensure Action, addresses the right of licensee to appeal regulatory action against the licensee based on law.

### Section .0300, Physical Plant Rules

The 10A NCAC 13E Section .0300, Physical Plant Rules are being proposed for adoption. These proposed rules are based on the existing 10A NCAC, Subchapter 13G - Licensing of Family Care Homes, Section .0300 Building rules. The family care home building rules were chosen as the basis for the ORP Section .0300, Physical Plant Rules because:

- The accommodations and spaces needed by ORP participants are the same as that of family care home residents;
- The family care home building rules have been successfully used for many years to provide safe and adequate space for the housing of family care home residents;
- Both programs have a mandated maximum capacity of six residents/participants; and
- Some residents living in family care homes actually utilize adult day care programs during the day.

The rules listed below adopt general requirements for the design and construction of ORP facilities as follows:

- Rule 10A NCAC 13E .0301, Submission of Information to the Division of Health Service Regulation, stipulates the specific forms and reports, which need to be submitted to the Construction Section for plan review. This rule indicates that ORPs will be notified of plan review deficiencies by letter. It also indicates that the ORP plan approval may require a Construction Section site visit.
- Rule 10A NCAC 13E .0302, Capacity, contains: the maximum allowable capacity of the ORP as six participants; the requirement for an ORP to submit plans to the Construction Section prior to an increase in capacity; and the requirement for the ORP facility to meet current fire safety regulations when the participant capacity is increased.
- Rule 10A NCAC 13E .0303, Design and Construction, stipulates the requirements for the design and construction of the ORP facility. Some of the major requirements are that the facility shall: comply with the applicable portions of the North Carolina State Building Code; be constructed, equipped, and maintained to provide the services offered; meet additional facility requirements if two stories in height; not use a basement or attic for storage; maintain windows as operable; comply with local code enforcement officials permitting requirements; and meet the requirements of the Commission of Public Health sanitation rules.
- Rule 10A NCAC 13E .0304, Location, stipulates that the ORP site: is approved by the local zoning board; is free of hazards; is accessible by the general public, and fire-fighting and emergency vehicles; has water supply and sewage systems approved by the local health department; and meets local ordinances.
- Rule 10A NCAC 13E .0312, Outside Entrance and Exits, contains requirements for exits and exit access doors, exit door locks, and exit door sounding devices for participants determined by physicians or otherwise known to be disoriented or wander.
- Rule 10A NCAC 13E .0318, Outside Premises, contains requirements for: maintaining a clean and safe outside premises; installing fencing that allows participants to freely exit and enter ORP; and illuminating exterior stairways and ramps by no less than 5 foot candles.
- Rule 10A NCAC 13E .0316, Fire Safety and Disaster Plan, contains requirements for: the installation of fire extinguishers; the creation of a written fire evacuation plan; the rehearsal of four fire evacuation drills per year; and the creation of a written disaster plan approved by the local management agency.
- Rule 10A NCAC 13E .0317, Building Service Equipment, stipulates that: building systems shall be maintained properly; room temperature shall have upper and lower limits between 75 and 81 degrees Fahrenheit; unvented burning room heaters and portable electric heaters shall be prohibited; the hot water tank shall be sized to supply adequate hot water; Illumination of participant areas shall meet certain minimum illumination levels; vent type gas logs may be

installed; and fireplaces and wood stoves shall be installed to minimize burn hazards to participants.

These rules adopt requirements for participant occupied areas of the ORP as follows:

- Rule 10A NCAC 13E .0305, Living Room, stipulates that the living area shall: have at least 40 square feet of floor area per participant; and have windows with views of the outdoors.
- Rule 10A NCAC 13E .0306, Dining Room, stipulates that the dining area shall have at least 20 square feet of floor area per participant and windows with views to the outdoors. This rule allows the ORP dining room area to be combined with the dining area required by the adult day care and adult health care programs.
- Rule 10A NCAC 13E .0308, Bedrooms, contains requirements for: the provision of a bedroom to meet a participant's needs based on age and sex; access to the bedrooms from other rooms; the number of participants allowed per bedroom; the size of the bedroom; the specific rooms to be used as a bedroom as authorized by the Construction Section; and the size of a bedroom closet or wardrobe. This rule also contains requirements for windows in bedrooms.
- Rule 10A NCAC 13E .0309, Bathroom, requires the following: at least one bathroom for six or less participants; privacy curtains at commodes, tubs and showers; a 40 foot maximum travel distance from the bathroom to a bedroom; handgrips at commodes, tubs and showers; and non-skid flooring. The ORP can also share its bathroom with the adult day care or adult health care programs if these programs meet their own bathroom requirements.
- Rule 10A NCAC 13E .0311, Corridors, requires that corridors shall be illuminated at night with at least one foot candle at floor level and be free of equipment and obstructions at all times.
- Rule 10A NCAC 13E .0314, Floors, requires a floor to be: smooth and made of non-skid material; kept in good repair; and without throw rugs.
- Rule 10A NCAC 13E .0315, Housekeeping and Furnishings, stipulates the requirements for: the number and type of bedroom and dining room furniture; living room furnishings that are functional and comfortable; a television and radio; recreational equipment and games; bedpans, urinals and hot water bottles; and housekeeping supplies such as bed linens, towels and soap. The ORP shall also maintain a North Carolina Division of Public Health approved sanitation classification at all times.

These rules adopt requirements for support rooms and spaces of the ORP as follows:

- Rule 10A NCAC 13E .0307, Kitchen, requires an ORP's kitchen to: be large enough for the preparation of food and washing of dishes; have a hood over the cooking unit with either mechanical ventilation to the outside or a filtered recirculation fan; and have a non-slippery water-resistant floor covering. This rule also allows the ORP's kitchen to be shared with the adult day care and adult health care programs.
- Rule 10A NCAC 13E .0310, Storage Areas, has requirements for: the size, number and separation of storage areas used for clean linen, soiled linen, food and household supplies; and the locking of storage areas containing hazardous materials.
- Rule 10A NCAC 13E .0313, Laundry Room, does not allow laundry equipment in living, dining, and bedroom areas.

#### Section .0400 Staff Qualifications and Staffing

- Rule 10A NCAC 13E .0401, Administrator, addresses the responsibility and qualifications of the administrator of the ORP.
- Rule 10A NCAC 13E .0402, Supervisor-in-Charge, addresses the responsibility and qualifications of the supervisor-in-charge of the ORP.

- Rule 10A NCAC 13E .0403, Staff and Staffing, addresses overall responsibilities and qualifications of ORP staff, staffing to meet needs of participants including one staff at all times qualified to administer medications.
- Rule 10A NCAC 13E .0404, Training On Cardio-Pulmonary Resuscitation, requires at least one staff on premises at all times trained in CPR by approved providers.

#### Section .0500 Program Policies

- Rule 10A NCAC 13E .0501, Program Policies, requires specific policies on the operation of the program, discussion of policies with participant and care giver, documentation of receipt of and agreement to policies by participant and caregiver, and implementation of policies by the ORP.

#### Section .0600 Enrollment and Services Planning

- Rule 10A NCAC 13E .0601, Enrollment of Participants, requires enrollment interviews of prospective participants and their caregivers, stipulates conditions for which applicants cannot be admitted, and requires a medical examination, physician orders and TB test.
- Rule 10A NCAC 13E .0602, Planning Services for Individual Participants, addresses assessments of participants being enrolled and written service plans addressing needs and interest of participant, referrals to licensed health professionals, progress notes, choosing time period of respite, handling unexcused absences, handling participant's leaving program for part of the day and notification of and reasons for discharge from the ORP.

#### Section .0700 Medication Administration

- Rule 10A NCAC 13E .0701, Medication Administration Policies and Procedures, requires policies and procedures to be developed and implemented on the administration of medications, documentation and storage and disposition of medications.
- Rule 10A NCAC 13E .0702, Medication Administration Competency Evaluation, requires clinical skills validation, successful completion of standardized exam or listing on Medication Aide Registry in order to administer medications and available consultation with a licensed health professional with all contacts documented.
- Rule 10A NCAC 13E .0703, Medication Administration, addresses medications administration, documentation of administration and storage in original pharmacy containers.

#### Section .0800 Nutrition and Food Service

- Rule 10A NCAC 13E .0801, Food Procurement and Safety, requires sanitary and orderly conditions in kitchen, dining and food service areas, meat from federally approved meat processing plant and a 3-day supply of perishable food, 5-day supply for non-perishables, on hand based on regular and therapeutic diets being followed.
- Rule 13E NCAC .0802 Food, Preparation and Service, requires staff, space and equipment for safe and sanitary food storage and handling, non-disposable table service with individual exceptions allowed, and food maintained as serving temperature when assisting with eating.
- Rule 10A NCAC 13E .0803, Menus, addresses the preparation and maintenance of menus, substitutions in menus, planning of menus based on participant preferences and requirements for therapeutic menus.
- Rule 10A NCAC 13E .0804, Food Requirements, stipulates serving of three meals per day and provision of diet appropriate snacks between meals.
- Rule 10A NCAC 13E .0805, Therapeutic Diets, requires these diets to be in writing with order specific to calorie, gram and consistency, approval by a licensed dietitian/nutritionist and a listing of those participants on such diets to guide food service staff.
- Rule 10A NCAC 13E .0806, Assistance with Eating, requires staff assistance with eating as necessary and how that assistance should be provided.

- Rule 10A NCAC 13E. 0807, Accommodation of Participant Needs and Preferences, requires documentation of variations from three meals a day based on participant needs and preferences to be documented.

Section .0900 Program Activities

- Rule 10A NCAC 13E .0901, Activities Program, requires activities to promote social interaction and consultation, if warranted, on the participant’s ability to engage in an activity.

**III. Impact Analysis**

Baseline

North Carolina Session Law 2015-241 Section 12G.3(a) amended N.C.G.S. § 131D by adding Section 6.1, Licensure to Offer Overnight Respite; Rules; Enforcement Programs, which created a new licensure program to be regulated by DHSR. Because this is a new program and new rules are being adopted for it, there are no existing rules that form the basis of the regulatory baseline.

Scope of Analysis

The time frame for the analysis is estimated to be approximately three fiscal years from FY 2016-17 to FY 2018-19. This time frame was chosen because it takes approximately three fiscal years to: design a facility or space by a private sector architect and engineer; complete the DHSR Adult Care Home Licensure application process; complete DHSR plan review; construct or renovate the facility; complete DHSR construction inspection; complete DHSR licensure initial inspection of facility; and occupy the facility by participants.

During this three year time period, costs expensed for establishing an ORP will vary depending on whether the facility is in design or construction. Table C1 indicates the activity requiring the expenditure, the persons affected, and the approximate fiscal year when funds will be expensed.

Table C1 - FY When Expenditures of Construction Related Costs Occur for New ORP

Activity Generating Costs	Persons Affected	FY 2016-17	FY 2017-18	FY 2018-19
Design of facility	ORP	X		
Submittal and approval of DHSR application	ORP, State	X		
Submittal and approval of plans to DHSR	ORP, State	X		
Construct or Renovate facility	ORP		X	
DHSR construction project inspection	ORP, State			X
DHSR ACLS Initial inspection	ORP, State			X
Occupancy of facility by program and installation of furniture	ORP			X

Assumptions

**DHSR Staff Costs**

- Staff time is impacted by inspection outcomes, meaning that if no significant problems or issues with non-compliance are identified, less staff time will be used to conduct the inspection and be spent on report writing once back in the office. There would also be fewer follow-up surveys needed. This analysis assumes that there will not be any construction compliance problems. For facility licensure, this analysis assumes one regulatory inspection follow-up will be conducted per operational facility per year to confirm correction of any violations, and one complaint

investigation will be conducted per year. These assumptions are based on the number of compliance issues that arose during the 3-year pilot.

- The benefits contribution for state government staff will stay in the range 33% to 34% for the next three years.
- Subsequent years are not expected to show any significant increase in staff cost because of continuing stagnant wages and benefits.
- The total annual cost of staff time for processing license applications and issuing licenses will be absorbed within the Division's operating budget without any increase to state funds.
- No negative licensure action will be taken within the three years of analysis.

### Number of ORP Programs Licensed

- During the FY 2016-17, the two ORP pilots currently in operation will complete the licensing process and will start operating. These two ORP pilots will remain in operation during FY 2017-18, and FY 2018-19.<sup>1</sup>
- This analysis assumes two new overnight respite programs will begin design in FY 2016-17. The Cleveland County pilot that is not currently operating an ORP plans to start the licensing process for an ORP in FY 2016-17. This pilot is expected to complete the licensing process sometime in FY 2017-18. Because the Cleveland County pilot is not currently operating, it is expected that the licensing process will take longer than the licensing of the two ORP pilot that are currently licensed. A second ORP is expected to be started after the construction of a new building for adult day care program in Mecklenburg County.<sup>2</sup>
- Growth in the number of operational ORP's is expected to be minimal and is estimated to be the addition of two programs in the next three fiscal years and add two programs every year thereafter. This low adoption rate assumption is based on pilot program results, ADC provider comments on the temporary rules, and email communications with ADC providers that suggest funding restrictions and facility compliance costs will prevent most existing facilities from establishing ORPs:<sup>3</sup>
  - **Funding restrictions.** Governmental funding is not available for these programs (with the exception of two waiver programs). Facilities must rely primarily on private pay participants with no expectation of additional funding at this time. The history of the pilot program suggests that few facilities may pursue an ORP license since four pilot programs initially were developed and became operational, but two of the programs closed due to cost and lack of additional funding. The cost of a private pay programs will also limit the number of participants in the programs. If additional Medicaid funding becomes a source of reimbursement for such services, the number of programs and participants will most likely increase. County governments have state funding that could be used for the overnight respite program, but this funding could also be used to fund participants in adult day care or adult day health programs. Currently, there is a long waiting list of people requesting funding from counties for adult day care or adult day health services. It is likely that counties would provide funds to a person needing adult

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<sup>1</sup> Direct telephone communication

<sup>2</sup> This information was reported to DHR by the North Carolina Adult Day Service Association.

<sup>3</sup> North Carolina General Assembly, Program Evaluation Division. (2014). *Overnight Respite Pilot at Adult Day Care Facilities Perceived as Favorable, but Lacked Objective Measures of Success*. Retrieved from

[http://www.ncleg.net/PED/Reports/documents/Respite/Overnight\\_Respite\\_Report.pdf](http://www.ncleg.net/PED/Reports/documents/Respite/Overnight_Respite_Report.pdf)

Public comments accessed from DHHS <https://www2.ncdhhs.gov/dhsr/rules/overnighttemp.html>

day care or adult day health services rather than a person needing overnight respite care services.

- **Facility compliance costs.** This analysis assumes that a new ORP will be started when an adult day care or adult health day program constructs a new building or when an existing I-4 ADC constructs an addition to their existing building. It is highly unlikely that a new ORP will be started by either renovating an existing building or adding onto an existing building without a sprinkler system due to the opportunity cost of overnight space requirements (lost day care space) and the cost of adding a sprinkler system to comply with building codes.
  - An existing adult day care or adult health day program probably would not renovate space within their building to add an ORP because the day program would lose participants. The Construction Section determined that a maximum of approximately 1,200 square feet of space would be required by the Section .0300 Rules for an ORP<sup>4</sup>. Existing adult day care or adult health care programs have approximately 90 square feet of space per participant in their programs.<sup>5</sup> If an adult day care or adult health care program decided to renovate internal space for an ORP, it would lose approximately 1,200 square feet of space from its existing space. This would translate into a loss of 14 participants in the day program (1,200 square feet divided by 90 square feet per participant) and an increase of only 6 in the ORP, which results in a net loss of 8 participants overall. It is unlikely that an existing adult day care or adult health day program would expense significant funds to renovate existing space, which would result in a loss of 14 full-time participants in their day program, in order to gain 6 overnight participants who would be limited to 60 calendar days of service.
  - An existing adult day care or adult health day program, which does not have a sprinkler system installed through-out their building, probably would not build an addition to their existing building to house an ORP because of the cost to install a sprinkler system in the existing building. Rule 10A NCAC 13E .0303 requires a sprinkler system in the addition housing the ORP and the existing building housing the adult day care or adult health day program.
  - Under the 2012 Edition of the North Carolina State Building Code, a building housing an adult day care or adult day health program is classified as an Institutional Group I-4 Occupancy, which is an occupancy that mandates the installation of a sprinkler system. But, an existing building without a sprinkler system that once housed an adult day care or adult day health program is allowed to be grandfathered as another classification under the North Carolina Rehab Code. As a result, there are many existing adult day care or adult day health programs in buildings without sprinkler systems and some new programs started each fiscal year in buildings without sprinkler systems. The cost to add a sprinkler system would be

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<sup>4</sup> The Construction Section calculated the approximate amount of space needed for three participant bedrooms (2 participants per bedroom), a living room, a dining room, a bathroom with a toilet, roll-in shower and sink, storage areas and corridors. The square footage could be reduced if the overnight respite services program housed less than the maximum of six participants. This square footage does not include space for a kitchen. Rule .0307 allows an overnight respite services program to use the adult day care or adult health day programs' kitchen.

<sup>5</sup> Fifty of the 100 current adult day care or adult health day programs were contacted via email and were asked to respond to questions related to: square footage of facility, whether their facility had a sprinkler system; and if they were planning to start an overnight respite services program. Twelve different facilities responded to the email. The 90 square feet of space per participant is the average for the twelve programs that responded. It was determined by dividing the facility square footage by the number of participants in the program and then calculating the average.



approximately \$18,000.<sup>6</sup> It is unlikely that an existing adult day care or adult health day program without a sprinkler system would expense significant funds to not only construct a 1200 square feet addition for an ORP, but also install an \$18,000 sprinkler system in the existing building.

- An existing adult day or adult day health program that is an I-4 may or may not build an addition for an ORP to their existing building. With respect to staffing and scheduling of program activities, the most efficient use of space is achieved when the activity areas required by the ADC rules are combined with the living and dining room areas required by the ORP rules. An existing I-4 ADC may not have enough activity space to meet the additional ORP rule space requirements, which may result in not only the construction of an addition but also renovations to the existing building itself. But, some ADCs may have enough existing activity space and may build an addition to their existing building for an ORP. In this case, there is no difference in the estimated costs to the state. The estimated construction cost to the ORP may be slightly higher for additional construction required between the existing building and the addition.
- The adoption of these proposed rules is not likely to affect the number of new facilities that will be constructed due to the 60 service day per participant limit and reimbursement restrictions.
- As described above, this analysis assumes that only new ADC facilities constructed according to the Institutional Group I-4 Occupancy building code would choose to establish an ORP. In order to provide an upper-bounds estimate of the proposed rule impact, this analysis assumes that *all* newly constructed I-4 facilities will choose to establish ORPs.
- DHSR assumes that two new I-4 facilities will be constructed each year. This assumption is uncertain due to lack of data on local demand for ORP services. However, DHSR estimates the range of possible new ADC construction to be from 0-4 facilities per year. Historical data on the elderly population in the state, the number of licensed ADCs, total ADC capacity, and the number and size of new I-4-compliant facilities that were constructed each year were reviewed in order to estimate the number of new I-4 facilities that would be built in the future. Total ADC capacity seems to be growing linearly, mirroring the growth in the elderly population. However, the capacity added by newly-constructed I-4 facilities does not present a discernable trend within the data available. Therefore, the average ADC capacity added by new I-4 facilities over the past 6 years (109 participant slots) was divided by the average capacity per new facility (39) to estimate the number of new I-4 facilities that would be certified annually. Data indicate that between 2 and 3 new facilities will be certified each year. This analysis calculates costs based on two new facilities being licensed per year to account for the conservative assumption that 100% of new facilities will opt to pursue an ORP license.

Table C2: Certified Adult Day Care Facilities and Capacity by Fiscal Year

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Total Certified ADC Facilities	104	100	106	100	98	97
Total ADC Capacity	3916	4871	4566	4,827	4996	4,919
New Certified I-4 Facilities	3	2	2	4	2	2

<sup>6</sup> For the twelve adult day care or adult health day programs who responded to the email, four programs did not have sprinkler systems installed in their buildings. The average square footage of the buildings housing these four programs was 2,600 square feet. As per the article “How much does a Fire sprinkler Cost?” (located at <http://www.costowl.com/b2b/security-fire-sprinkler-system.html>), the cost per square feet of adding a sprinkler system to an existing building would be \$7. The total cost for installing a sprinkler system to an existing building would be 2,600 square feet times \$7 per square feet or \$18,000.

New I-4 Capacity	227	37	42	227	39	80
Avg New Capacity per I-4 Facility	76	19	21	57	20	40

Source: DHHS, Division of Aging adult day care and adult day health facility certification records.

Based on these assumptions, Table C3 indicates the number of ORPs assumed to be in operation, design or construction each fiscal year.

Table C3 - Number of Projected ORPs in Operation, Design and Construction in FY 2016-17 to FY 2018-19

Item	FY 2016-17	FY 2017-18	FY 2018-19
No. of Pilots being Licensed and Operated	2 <sup>a</sup>	0	0
No. of ORPs in Design and Undergoing Plan Review	2 <sup>b</sup>	2	2
No. of ORPs in Construction and/or Receiving Construction Project Inspection and ACLS Initial Inspection	0	2 <sup>c</sup>	2
No. of ORPs in Operation and Receiving an Annual Inspection	0	2	4

<sup>a</sup> Pilots currently in operation will be required to go through an application and licensing process. As part of licensing, the pilot will receive an initial inspection from ACLS and Construction Section. An annual inspection will not be needed until FY 2017-18.

<sup>b</sup> The Cleveland County pilot in FY 2016-17 will receive a complete plan review and a plan review onsite inspection as if a new ORP.

<sup>c</sup> In FY 2017-18, the Cleveland County pilot will receive a Construction Section construction project inspection and an ACLS licensing initial inspection, but will not receive an annual inspection. The Mecklenburg County ORP will be in construction and will receive a construction project inspection and ACLS licensing initial inspection.

#### Construction Costs

- The analysis uses cost data collected from the four pilot programs to project future impacts due to the adoption of the 10A NCAC 13E rules. This analysis assumes that construction and related costs for establishing the overnight respite program pilots will be approximately equivalent to construction and related costs for future overnight respite programs.

#### ORP Participants

- It is not possible to make a reasonable assumption regarding what percent of population served in licensed ADCs are currently seeking ORP elsewhere nor the percentage expected to be new ORP participants.
- It cannot be determined if these rules will improve the availability of overnight respite service in the state or whether ADC facilities will draw clients from existing providers which would mainly be current licensed adult care home and family care homes who utilize the respite rule in their regulations. The number of such participants who have to apply to be residents of these homes is unknown but there is a valid assumption that ADC facilities may attract overnight respite applicants because of a less cumbersome application process.

#### IV. Cost Estimates

##### New Requirements for ADCs Providing ORPs

The differences between the overnight physical plant and staffing requirements vs the day-only rules are what create new costs for ADC providers who want to provide overnight services. It should be noted that the greater part of the non-physical plant requirements imposed by the ORP rules are the same requirements found in the ADC rules that currently govern the adult day care center. Requirements that

would result in additional operational and programmatic costs are not expected to have a substantial impact on the programs.

The major differences between the physical plant of an ORP and ADC are as follows.

- By physical plant rules, the ORP is required to have single occupancy bedrooms of 100 square feet or double occupancy bedrooms of 160 square feet, which are not required in the ADC rules. The maximum number of participants allowed in the ORP is six. Additionally, the ORP bedrooms must have closets, windows to the outdoors, which open, and bedroom furniture. The ORP is required to have a living room with 40 square feet of space per ORP participant and a dining room with 20 square feet of space per participant, which is a total of 60 square feet per ORP participant. The ADC is required to have activity space of 40 square feet per participant. The ORP 60 square feet per participant must be constructed in addition to the ADC 40 square feet per participant. The ORP is required to have at least one bathroom with a shower or tub, lavatory and toilet, which is one bathroom for every six or fewer participants. The ADC is required to have bathrooms that do not contain a tub or shower. The ADC must have separate male and female toilets at a rate of one toilet for every twelve participants and staff. In an ADC, lavatories are required at a rate of one lavatory for every two toilets.
- The ORP rule related to equipment and furniture is much more extensive than the furniture rule in the ADC rules. The ORP rule requires window curtains, a television, a radio, beds, bedside table, chest of drawers, dresser mirror, a visitor chair, a comfortable bedroom chair, towels and bedsheets, walkers, and wheelchairs. There are no similar requirements in the ADC rules.
- According to the ORP rules, The ORP and the adjoining ADC are required to have a sprinkler system. The ADC rules do not require a sprinkler system. Some older ADCs do not have sprinkler systems because they were built at a time when the North Carolina State Building Code did not require a sprinkler system. Living room, bedroom, dining room, and corridor floor surface light levels in foot-candles are specified in the ORP rules. There are no equivalent requirements in the ADC rules.
- The ORP rules require two exterior ramps if the ORP program has a participant that needs physical assistance to evacuate the building. The ADC rules only requires one ramp. The ORP rules do not allow changes in elevation of the floor surface. The ADC rules do not have this requirement.

#### Local Governments

These rules will not create a cost to local governments because the licensing and oversight of overnight respite programs is the responsibility of the state.

#### Federal Governments

These rules will not create a cost to the federal government because no additional federal funds can be used to pay for this service.

#### State Government

There is a non-substantial opportunity cost to state government in the form of employee staff time and resources to review facility design and construction plans and conduct inspections of the programs.<sup>7</sup> Each

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<sup>7</sup> Unless otherwise specified, the source for state employee salary costs is the State of North Carolina 2014 Career-Banding Rate Schedule effective July 1, 2014. These costs have been increased by the 1.5% salary increase, which was a modification to the State Budget Act of 2015 by NC Session Law 2016-94. The Office of State Human Resource Total Compensation Calculator was used to determine the salary cost with fringe benefits. The State of North Carolina Office of State Budget and Management *Budget Manual* updated January 1, 2016 is the source of the mileage and subsistence costs.

site is to be inspected initially, then annually thereafter by the Division of Health Service Regulation. Inspections will include staff from the Adult Care Licensure Section and the Construction Section. Two positions were budgeted within the 2015 budget, one FSC I for adult care and one engineer/architect for construction which amounted to \$82,606 for FY2015-2016 and \$88,033 for FY2016-2017. Although the Division has determined it will fill these positions, not enough money was budgeted for the two consultants, so each section will have to absorb the additional cost to fill the positions. The state salary for an engineering tech is \$76,767 and that for an FSC I is \$70,121, including fringe benefits. The amounts shown are the budgeted salary for these two positions. These positions would not be eligible for the 1.5% salary increase approved in NC Session Law 2016-94. The source for this information is the Division of Health Service Regulation Budget Office.

#### DHSR Adult Care Licensure Section (ACLS)

#### **ACLS Staff Costs for Survey Inspections Required by Law and Complaint Investigations**

Regulatory inspections (initial, annual, follow-up and complaint) would be completed by a Facility Survey Consultant I (FSC-1) from the Adult Care Licensure Section. Based on current retirement, social security and health insurance rates (for SFY2016-17), a FSC-1 making \$52,572 annually with fringe benefits (the total benefits contribution for FY2016-17 is set at 33.3%) receives a total compensation of \$70,121. Therefore, the estimated hourly wage for the FSC-1 working 40 hours per week is \$33.71/hour (\$70,121/2080 hours). Figures are based on those provided by the DHSR Budget Office.

Staff Time (Figures calculated on annual cost of 2 inspections for FY2016-2017 and FY2017-2018 and 4 inspections for FY 2018-2019)

Initials, Annuals and Follow-up Inspections:

Inspection time

- Inspections (to be completed annually) will each take an estimated 6 hours to complete at a cost of approximately \$202 (\$33.71 x 6 hrs.) per inspection.
- Annual cost:
  - 2 initial inspections per FY2016-2017, each taking 6 hours= \$404 (\$202 x 2)
  - 2 annual inspections per FY2017-2018, each taking 6 hours= \$404 (\$202 x 2)
  - 4 inspections (2 initial and 2 annual) per FY2018-2019, each taking 6 hours= \$808 (\$202 x 4)

Inspection preparation and report writing

- Inspection preparation and report writing will take an estimated 8 hours for each inspection including pre-inspection preparation, reviewing facility policy and procedures for initials, writing reports, creating and sending letters and emails, and recording time spent in survey activities.
- Annual cost:
  - 2 initial inspections per FY2016-2017, each taking 8 hours= \$544 (\$68 x 8 hrs)
  - 2 inspections per FY2017-2018, each taking 4 hours (excludes policy & procedure review)= \$272(\$68 x 4 hrs)
  - 4 inspections (2 annuals, 2 initials) per FY2018-2019, taking 24 hours= \$816 (\$34 x 24)

Follow-up to confirm correction of any deficiencies or violations (estimate of 2/year)

- Follow-ups will take approximately 3 hours each (to include office time) at a cost of approximately \$102 (\$34 x 3)
- Annual Cost:
  - 2 inspections per FY2016-2017, each taking 3 hours= \$204 (\$102 x 2)

- 2 inspections per FY2017-2018, each taking 3 hours= \$204(\$102 x 2)
- 4 inspections per FY2018-2019, each taking 3 hours= \$408 (\$102 x 4)

#### Travel time

- Travel time is calculated based on staff time valued at \$34/hour to travel by vehicle from the closest ACLS regional to the program site. This travel time is based on data from the MapQuest website ([www.mapquest.com](http://www.mapquest.com)) and does not account for other factors including traffic issues and car maintenance.
- Note: Since there is no way of knowing the location of program sites except for two of the pilot expected to continue to operate, the following travel time to the those two pilot sites is being used.
- The roundtrip distance to each site is:
  - Pilot Site #1 (Raleigh, NC): 30 minutes
  - Pilot Site #4 (Asheville, NC): 540 minutes
- Total travel time for one inspection is: 570 minutes (9.5 hours)
- Cost of staff travel time for inspections:
  - 2 inspections per FY2016-2017, taking 9.5 hours= \$323 (\$34 x 9.5)
  - 2 inspections per FY2017-2018, taking 9.5 hours= \$323 (\$34 x 9.5)
  - 4 inspections per FY2018-2019, taking 9.5 hours= \$646 (\$68 x 9.5)
- Cost of staff travel time for follow-up inspections:
  - 2 inspections per FY2016-2017, taking 9.5 hours= \$323 (\$34 x 9.5)
  - 2 inspections per FY2017-2018, taking 9.5 hours= \$323 (\$34 x 9.5)
  - 4 inspections per FY2018-2019, taking 9.5 hours= \$646 (\$68 x 9.5)

#### Mileage Costs

- Mileage cost is calculated as travel to and from the ACLS regional office closest to the program site using a state vehicle at \$0.34 per mile as determined by the Motor Fleet Management Division.
- Note: Since there is no way of knowing the location of program sites except for two of the pilot expected to continue to operate, the travel time to the two pilot sites is being used.
- The roundtrip distance to each site is:
  - Pilot Site #1 (Raleigh, NC): 20 miles
  - Pilot Site #4 (Asheville, NC): 501 miles
  - Total miles traveled for one inspection is: 521 miles
- Total mileage cost for inspections:
  - 2 inspections per FY2016-2017, at 521 miles = \$188 (521 x \$0.36)
  - 2 inspections per FY2017-2018, at 521 miles = \$188 (521 x \$0.36)
  - 4 inspections per FY2018-2019, at 521 miles = \$376 (521 x \$0.36)
- Total mileage cost for follow-up (f/u) inspections:
  - 2 f/u inspections per FY2016-2017, at 521 miles = \$188 (521 x \$0.36)
  - 2 f/u inspections per FY2017-2018, at 521 miles = \$188 (521 x \$0.36)
  - 4 f/u inspections per FY2018-2019, at 521 miles = \$376 (521 x \$0.36)

#### Subsistence Costs

- By state policy, there would only be reimbursement for lodging and meals for the trip to Asheville
- Subsistence costs for one inspection in Asheville (located 501 miles round trip from the office) would be: \$105 (addition of state rate for lunch, dinner, lodging, and breakfast) This includes lodging costs for one overnight stay.
- The estimated total subsistence costs for inspections (annual and follow up) would be:

- 2 inspections per FY2016-2017 = \$210 (\$105 x 2)
- 2 inspections per FY2017-2018 = \$210 (\$105 x 2)
- 4 inspections per FY2018-2019 = \$420 (\$105 x 4)

Table C4: Total Adult Care Licensure Initial, Annual and Follow-up Inspection Cost

Cost	FY2016-2017	FY2017-2018	FY2018-2019
Inspection	\$404	\$404	\$808
Report Writing	\$544	\$272	\$816
Follow up	\$204	\$204	\$408
Travel	\$646	\$646	\$1292
Mileage	\$376	\$376	\$752
Subsistence	\$210	\$210	\$420
<u>Total</u>	<u>\$2384</u>	<u>\$2112</u>	<u>\$4496</u>

### Complaint Investigations

Complaint Investigations would be completed by a Facility Survey Consultant I (FSC-1) from the Adult Care Licensure Section. The estimated hourly wage for the FSC-1 working 40 hours per week is \$33.71/hour (\$70,121/2080 hours). Figures are based on those provided by the DHSR Budget Office.

Staff Time (Figures calculated for one complaint investigation per year based on one complaint investigation of one pilot program (out of a total of 2 pilot programs) over the past three years.

#### Investigation Time

- Investigations will take an estimated 8 hours to complete at a cost of approximately \$272 (\$34 x 8 hrs.) per investigation.
- Annual cost: 1 investigation per FY2016-2017, FY2017-2018 and FY2018-2019 = \$272 per year

#### Investigation preparation and report writing

- Investigation preparation and report writing will take an estimated 2 hours for each inspection. This includes pre-inspection preparation, writing reports, creating and sending letters and emails, and recording time spent in survey activities.
- Annual cost: 1 investigation requiring 2 hours of office time per FY2016-2017, FY2017-2018 and FY2018-2019 = \$68 (\$34 x 2 hours)

#### Travel Time

- Travel time for 1 complaint investigation per year = \$170 (5 hours x \$34.00)

#### Mileage Cost

- Mileage cost for 1 investigations per FY2016-2017, FY2017-2018 and FY2018-2019 (based on average mileage to 2 pilot sites) = \$94 (260 miles x \$.36 mile) per year.

#### Subsistence

- Complaint would not meet threshold for subsistence reimbursement per state policy.

**Table C5: Total Adult Care Licensure Complaint Investigation (CI) Cost**

Cost	FY2016-2017	FY2017-2018	FY2018-2019
Investigation	\$272	\$272	\$272
Report Writing	\$68	\$68	\$68
Travel	170	\$170	\$170
Mileage	\$94	\$94	94
Total CI Cost	\$604	\$604	\$604

**DHSR Construction Section**

The DHSR Construction Section will be impacted by costs associated with: additional staff time spent on plan review work and construction project inspections; additional staff time spent on annual inspections; and subsistence and mileage costs.

Plan review work and construction project inspections are completed by an engineer and architect, which are career banded positions. A new engineer and architect will not be hired for plan review of the ORPs. The Construction Section has many engineers and architects already in the Section, which can absorb this work without significant impact to other plan reviews. Based on the Journey Market Rate, the hourly rate for an Engineer and an Architect at a Journey Level Competency including fringe benefits is \$46 per hour (\$95,301/2080 hours) and \$47 per hour (\$97,707/2080 hours), respectively. The annual inspections are completed by a career banded engineering technician position with a budgeted salary of \$76,767, including fringe benefits. This is a new position to be hired by the Construction Section.

These costs are calculated per construction project or per ORP as indicated below.

**Pilot Licensing Costs in FY 2016-17**

- A plan review will not be required. Staff time would be spent on conducting a construction project inspection of the facility, documenting of deficiencies in written form, preparing a construction approval letter and responding to questions from ORP’s architect and engineer. The architectural construction project inspection time is estimated to be 30 hours per project, which at \$47 per hour compensation rate (DHSR architect salary with fringe benefits) equals \$1410. The engineering construction project inspection time is estimated to be 30 hours per project, which at \$46 per hour compensation rate (DHSR engineer salary with fringe benefits) equals \$1380.
- Transportation costs for the ORP in Raleigh (located 20 miles roundtrip from the office) would be 20 miles times 34 cents per mile (state vehicle rate) or \$7.00. Transportation and subsistence costs for the ORP in Asheville (located 501 miles round trip from the office) would be: \$170 (501 miles times 34 cents per mile) plus \$210 (state rate for lunch, dinner, lodging, and breakfast for an architect and engineer) or \$380. This includes lodging costs for one overnight stay. Staff travel time would be 10 hours (round trip to Asheville and Raleigh ORPs) times \$93/hour (total of architect and engineer compensation rates) or \$930.
- The estimated total pilot licensing costs for two pilots within FY 2016-17 - \$4107.

**Plan Review Costs**

- Staff time spent on plan review includes review of plans, documenting of deficiencies in written form, preparing a plan approval letter and responding to questions from ORP’s architect and engineer. The architectural plan review time is estimated to be 30 hours per project, which at \$47 per hour compensation rate (DHSR architect salary with fringe benefits) equals \$1410. The engineering plan review time is estimated to be 30 hours per project, which at \$46 per hour compensation rate (DHSR engineer salary with fringe benefits) equals \$1380. For both engineer and architect the cost is \$2790. For two ORPs, the estimated cost for staff time is \$5,580.

- In FY 2016-17, travel costs for the Cleveland County pilot (located 416 miles roundtrip from the office) would be 416 miles times 34 cents per mile (state vehicle rate) or \$141. Travel costs for the ORP in Mecklenburg (located 270 miles round trip from the office) would be: \$92 (270 miles times 34 cents per mile). Subsistence would cost \$420 (state rate for lunch, dinner, lodging, and breakfast for an architect and engineer on two separate trips). Staff travel time would be 12 hours (round trip to Cleveland County and Mecklenburg ORPs) times \$93/hour (total of architect and engineer compensation rates) or \$1116. The total for all these items is \$1769.
- In FY 2017-18 and FY 2018-19, travel costs will vary depending on the location of the facility, but for the analysis it was assumed that one overnight stay would be required for a facility which is located 120 miles from Raleigh. Travel time for staff would cost 8 hours (4 hours per architect and engineer) times \$93 per hour compensation rate (total of architect and engineer compensation rates) or \$744. Transportation costs would be 240 miles (round trip) times 34 cents per mile (state vehicle rate), which equals \$82. Subsistence costs would be equal to a total of \$210 (state rate for lunch, dinner, lodging, and breakfast for an architect and engineer). The total for all these items is \$1036. For two ORPs within a fiscal year the cost is \$2,072.
- In FY 2016-17, the estimated total plan review costs for two ORPS - \$7,349.
- In FY 2017-18 and FY 2018-19, the estimated total plan review costs for two ORPS - \$7,652.

### **Construction Project Inspection Costs**

The Cleveland County pilot is already constructed, but will receive a construction project inspection in FY 2017-18. The Mecklenburg ORP will start construction in early FY 2017-18 and receive a construction project inspection in late FY 2017-18.

- Staff time would be spent on inspecting the facility, documenting of deficiencies in written form, preparing a construction approval letter and responding to questions from ORP's architect and engineer. The architectural and engineering construction inspection costs will be equal to the architectural and engineering plan review costs, which are \$1410 and \$1380, respectively. For two ORPs the estimated cost for staff time is \$5,580.
- In FY 2017-18, staff travel time, transportation, and subsistence costs related to the Cleveland County pilot and the Mecklenburg ORP would be equal to the costs indicated above for plan review, which is \$1,769.
- In FY 2018-19, staff travel time, transportation, and subsistence costs for two new ORPs would be equal to the costs indicated above for plan review is \$2,072.
- In FY 2017-18, the total estimated construction inspection costs are - \$7,349.
- In FY 2018-19, the total estimated construction inspection costs for two ORPS within a FY - \$7,652

### **FTE costs for annual inspections**

- The Construction Section conducts an annual inspection that is completed after the ACLS annual inspection is completed. One engineering technician has been budgeted to support the annual physical plant inspection work of ORPs at a FY cost of \$76,763, which includes fringe benefits. In FY 2017-18 and FY 2018-19, the engineering technician will conduct annual inspections, assist with the construction project inspections, provide technical assistance to ORP related to facility compliance issues, and conduct complaint investigations. Workload for the position will increase as the number of licensed ORPs increase. It is estimated that the percentage of time the engineering technician will be dedicated to the ORP program in FY 2017-18 and FY 2018-19, is 60% (\$46,060.) and 90% (\$69,090), respectively. When not working on the ORP, this position will be conducting annual inspections of family care homes and residential mental health facilities.



**Transportation and subsistence costs for annual inspection of two pilots in FY 2017-18 and FY 2018-19**

- Transportation costs for the ORP in Raleigh (located 20 miles roundtrip from the office) would be 20 miles times 34 cents per mile (state vehicle rate) or \$6.80.
- Transportation and subsistence costs for the ORP in Asheville would be: \$170 (501 miles times 34 cents per mile) plus \$105 (addition of state rate for lunch, dinner, lodging, and breakfast for an engineering technician) or \$275. This includes lodging costs for one overnight stay.
- The estimated total transportation and subsistence costs for annual inspection of two pilots - \$282.

**Transportation and subsistence costs for annual inspections in FY 2018-19**

- This amount is equal to the total estimated transportation and subsistence costs for the Cleveland County pilot and the Mecklenburg ORP indicated in the plan review costs, which is \$653.

The estimated total cost impact to the Construction Section is summed in Table C6 for FY 2016-17, FY 2016-17, and FY 2018-19 and is \$11,456, \$61,343 and \$85,329 respectively.

Table C6 - Estimated Total Impact to Construction Section for FY 2016-17 to FY 2018-19

Item	FY 2016-17	FY 2017-18	FY 2018-19
Licensing of Two ORP Pilots	\$4,107	\$0	\$0
Plan review	\$7,349	\$7,652	\$7,652
Construction project inspection	\$0	\$7,349	\$7,652
Annual inspections by FTE	\$0	\$46,060	\$69,090
Transportation and subsistence for annual inspections	\$0	\$282	\$935
Total Estimated Impact	\$11,456	\$61,343	\$85,329

Total State Government Impact

The estimated total cost impact to State Government is indicated in Table C7.

Table C7 - Estimated Total Impact to State Government for FY 2016-17 to FY 2018-19

DHSR Section	FY 2016-17	FY 2017-18	FY 2018-19
Adult Care Home Licensure	\$2,988	\$2,716	\$5,100
Construction Section	\$11,456	\$61,343	\$85,329
Total Impact to State Government	\$14,444	\$64,059	\$90,429

Overnight Respite Program Providers (ADC facilities)

The costs to the certified adult day care programs to meet the rule requirements, beyond the two currently operating with an ORP as part of the pilot program, will differ because there will be some variation in the capabilities and ‘readiness’ of the adult day care programs choosing to offer overnight respite programs. The state’s pilot program was the first time this service has ever been allowed to be provided in a certified adult day care programs. For the purpose of this analysis, the cost already imposed by the temporary rules is considered as much as possible. Each pilot was able to provide some information on the costs of start-up and operation and of revenues based on survey responses from them.

It should be noted that the greater part of the non-physical plant requirements imposed by the ORP rules are the same requirements found in the ADC rules that currently govern the adult day care center. Many of the responses from the pilot programs on expenses related exclusively to overnight respite indicated

that costs were tied into or co-mingled with the cost of the adult day care program with the two programs sharing most resources and staff. Requirements that would result in additional operational and programmatic costs are not expected to have a substantial impact on the programs. Several of the Physical Plant requirements of the ORP rules that will result in a non-substantial impact to ADC facilities are as follows: sprinklering of an existing ADC not classified as an I-4 under the NC State Building Code; constructing a bathroom with a shower or tub, sink and toilet; constructing bedrooms, dining and living areas; and purchasing furniture for the bedrooms, dining and living areas. Only two of the pilot ORPs have been operational for any length of time, as noted previously, so data is limited. As one pilot program reported, mirroring the experience of the other program, it is difficult to differentiate how much has been spent related to overnight respite. Annual costs varied dramatically during the total time the ORP respite services have been offered depending on the number of overnight stays as well as the acuity mix. Many of the expenses are incurred regardless of whether or not there is overnight respite such as housekeeping, security, phones, utilities, etc. Many of the costs were not separated out in financial records to show the exact expense related to overnight respite only.

**Licensure**

G.S 131D-6.1 (i) contains the initial and renewal licensure fees for ORP participants. The initial licensure fee is \$350.00 and the annual licensure renewal fee is \$315.00

Table C8: Licensure Renewal Fees

Licensure Fees	FY 2016-17	FY 2017-18	FY 2018-19
Initials	\$700 (2)	N/A	\$700 (2)
Renewals	N/A	\$630 (2)	\$630 (2)
Total Renewal Fees	\$700	\$630	\$1330

**Physical Plant Rules**

The 10A NCAC Section .0300 Physical Plant Rules contain requirements that impact the design and construction costs of an ORP. This analysis uses cost data collected from the four overnight respite program pilots to project future impacts due to the adoption of the 10A NCAC 13E rules. The physical plant related costs collected from the four pilot are listed in Table C9.

Table C9 - Summary of Physical Plant Related Costs for Four Pilot Programs

Pilot Location	Type of Construction	No. of Participants	Construction or renovation cost	Architect design fees	Furniture and Equip.
Raleigh	New construction	6	\$64,000	\$1600	\$12,000
Shelby	New construction	5	\$90,000 <sup>a</sup>	Not reported	Not reported
Wilmington	Renovation	6	\$60,000	Not reported	Not reported
Asheville	Renovation	6	Not reported	Not Reported	\$9,000

<sup>a</sup> The actual cost of \$75,000 was multiplied by a factor of 6/5 to equalize the cost to a 6 participant ORP.

**Plan Review Fee**

As per N.C.G.S. 131E-267, ORPs are required to pay a plan review fee to the Construction Section after the submittal of plans and specifications. This fee is charged on a one-time per-project basis and is \$225.00. This fee is not expected to increase over the next couple of years.

- In FY 2016-17, the two pilots, the Cleveland County pilot, and the Mecklenburg ORP will pay a plan review fee for a total cost of \$900. In FY 2017-18 and FY 2018-19, total plan review fees to be paid for two new ORPS within a FY is \$450.

### **Construction cost**

The Cleveland County pilot construction costs are not included because it was constructed at an earlier date for the pilot program.

- The Construction cost that was reported by the four pilots included architectural and engineering construction administration fees, contractor fees, and site work. For the Mecklenburg ORP, this cost estimate will use the average of the construction costs reported by the three pilots, which is \$71,400.
- Total estimated ORP construction cost per project based on construction costs occurring prior to FY 2016-17 is \$71,400. This cost is expected to increase over the next three fiscal years. Between the first quarter of 2015 and 2016, construction costs increased at a rate of 4.64%.<sup>[1]</sup> Using \$71,400 as the base estimated cost occurring in 2015 and an escalation factor of 4.64%, the projected FY 2017-18 and FY 2018-19 construction costs for one ORP are \$81,810 and \$85,600, respectively.
- In FY 2017-18, the total estimated construction cost is \$81,810 (Mecklenburg ORP). The total estimated construction costs for two new ORPS within FY 2018-19 is \$171,200 (2 x \$85,600).

### **Architectural design fee**

- This cost estimate will use the architectural fee reported by the Raleigh pilot, which is \$1600. This cost is expected to increase slightly over the next three fiscal years.<sup>[2]</sup> Using \$1600 as a base cost occurring in 2015 and 1.5% as an escalation factor, the FY2016-17, FY 2017-18, FY 2018-19 are \$1,650, \$1,680, and \$1,700, respectively.
- In FY 2016-17, the total estimated architectural fee for the Cleveland County pilot, and the Mecklenburg ORP is \$3,300. Even though the Cleveland County pilot is already constructed, it will be required to hire an architect and submit plans for review. Therefore, Cleveland County pilot architectural fee may be less than \$1,650. In FY 2017-18 and FY 2018-19, the total estimated architectural fee for two new ORPS within the fiscal years is \$3,360, and \$3,400, respectively.

### **Furniture and equipment costs**

The Cleveland County pilot furniture costs are not included because furniture was purchased at an earlier date for the pilot program. The first year that money will be expensed for furniture will be in FY 2018-19 by the Mecklenburg ORP.

- This cost estimate will use the average of the furniture costs reported by the Raleigh and Asheville pilots, which is \$10,500. Over the next three fiscal years, this cost is expected to increase at a rate similar to the escalation factor for construction costs. Using \$10,500 as the base estimated cost occurring in 2015 and an escalation factor of 4.64%, the projected FY 2018-19 furniture costs is \$12,600.
- In FY 2018-19, the total estimated furniture and equipment costs for the Mecklenburg ORP is \$12,600.

The physical plant rules total estimated impact to ORPs is indicated in Table C10.

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<sup>[1]</sup> Turner, Cost Index: Increasing Construction Activity Leads to Cost Increases, <http://www.turnerconstruction.com/cost-index> (2016).

<sup>[2]</sup> Bureau of Labor Statistics, Producer Price Index Industry Data for Architectural Services, [http://data.bls.gov/timeseries/PCU541310541310?data\\_tool=XGtable](http://data.bls.gov/timeseries/PCU541310541310?data_tool=XGtable) (June 2016)

Table C10 - Physical Plant Rules Estimated Total Impact to ORPs for FY 2016-17 to FY 2018-19

Item	FY 2016-17	FY 2017-18	FY 2018-19
Plan review fee	\$900	\$450	\$450
Construction cost	0	\$81,810	\$171,200
Architectural design fee	\$3,300	\$3,360	\$3,400
Furniture and equipment	0	0	\$12,600
Total Estimated Impact	\$4,200	\$85,620	\$187,650

### Staff Qualifications and Staffing

Section 10A NCAC 13E .0400 Staff Qualifications and Staffing Rules contain requirements for staff, staffing and staff training. Based on experience of current pilot programs no new staff were hired initially but ADC staff shared in the responsibilities of the ORP. The ORP participants were participants in the ADC program as well. The two pilot programs reported not hiring new staff specifically for overnight respite. Everyone that worked during ORP also worked in the ADC in some capacity so that any staff working during the daytime hours also has the responsibility for the ORP participants. Those who reported were unable to break out the time spent on ORP vs ADC. One ADC hired one RN/Program manager to split her time between respite and day care. The survey results of the programs provided little information on staffing costs because of the way staffing was configured with ADC staffing. The costs that were able to be determined from program input are as follows:

Reports of the cost of hiring/orientation/training of one staff person varied from \$842 to \$3,000. A cost of \$1200 was estimated in consideration of the widely varying figures and \$1500 for third fiscal year in the analysis.

Opportunity costs are figured at 192 respite nights (the average number of respite nights for the operational pilot facilities) multiplied by approximately 12 hours/ORP visit and then multiplied by an estimate of \$15.00/hour employee cost:

192 night x 12hours x 15 wages = \$34,560/yr/facility.

Rules require at least one staff person on site and available and qualified to administer medications and provide supervision. While this could be an ADC staff person during the day, the evening, night and early morning hours would require at least one staff person present. The cost would depend on the level of training needed based on the participants being served and the number of respite days per year which would be highly variable. One program of six participants reported 219 respite days for 2014 and 94 respite days for 2015 The other operating program of 4 participants reported 71 respite days for 2015 (no reporting for 2014) for an average of 192 annual respite days inclusive of both programs.

### Program Policies

Section 10A NCAC 13E .0500 Program Policies contain requirements for development and implementation of the ORP's policies. Only one pilot reported cost which was \$600.00 and one estimated 10 hours of work in development and implementation. If a licensed health professional from outside the ADC is involved in this process, a typical hourly cost figure based on input from several nurses was determined to be approximately \$60.00/hour which would result in a total cost of \$600.00 as well. This cost would only occur during the licensing of a new ORP. Based on the cost of \$600.00 for one program, the cost for FY2016-17 would be \$1200 for two new programs, no cost in FY 2017-18 and \$1200 for two new programs in FY 2018-19.

### Enrollment and Service Planning

Section 10A NCAC 13E .0600 Enrollment and Service Planning contains requirements for enrollment and development and implementation of each participant's service plan. No cost was reported by the

pilot programs but there was indication that it was either absorbed by current staff or that a separate additional cost for the ORP from the ADC was not able to be determined. The enrollment process for ORP at an ADC is not significantly different from enrollment in the daytime program.

**Medication Administration**

Section 10A NCAC .0700 Medication Administration contains requirements for medication administration to participants by qualified staff. No cost was reported by the pilot programs but there was indication it was absorbed by current staff or that a separate additional cost for the ORP from the ADC was not able to be determined. The opportunity costs of staff time for medication administration are included in the overall nighttime staffing costs, estimated at \$34,560/yr/facility.

**Nutrition and Food Service**

Section 10A NCAC .0800 Nutrition and Food Service contains the requirements for procuring and storage of food, menus and food service. Only one pilot program reported a cost which was estimated at \$12.00 per day per participant. If you average days per year based on number of respite days given by two programs for two years, the average number of days of respite per year would be 192 days of respite per year per program. So two programs in FY2016-17 cost would equal 192 x \$12.36 (escalated food cost per year at 3% per USDA food price outlook) = \$2373 x 2 programs = \$4646 per year and FY 2017-18 would equal 192 x \$12.72 = \$2442 x 2 programs = \$4884 per year. For FY 20117-18 it would be 192 days x \$13.10 = \$ 2516 x 4 programs = \$10062.

The programmatic rules total estimated impact to ORPs is indicated in Table C11.

Table C11 - Estimated Total Impact to ORPs for FY 2016-17 to FY 2018-19

Item	FY 2016-17	FY 2017-18	FY 2018-19
Licensure Fee	\$700	\$630	\$1330
Staff Time	\$69,120	\$69,120	\$138,240
Policy Development	\$1,200	\$0	\$1,200
Food Service	\$4,646	\$4,884	\$10,062
Total Estimated Impact	\$75,666	\$74,634	\$150,832

The total cost to ORPs, including programmatic rules and physical plant rules, is indicated in Table C12.

Table C12 - Estimated Total Impact to ORPs for FY 2016-17 to FY 2018-19

Item	FY 2016-17	FY 2017-18	FY 2018-19
ACH portion of Rules	\$75,666	\$74,634	\$150,832
10A NCAC Section .0300 Physical Plant Rules	\$4,200	\$85,620	\$187,650
Total Estimated Impact	\$79,866	\$160,254	\$338,482

Participants and Families

Taking the average of 192 days of respite care per program for a year x the average cost between the two programs that reported, which is \$203 per respite day (\$250/respite day at 279 respite days and \$150/respite day at 94 respite days as reported in response to questionnaire) the cost for all participating families would total \$38,976 a year for one program. So for two programs in FY2016-17 and FY 2017-18 the cost, including an increase of 2.6% per year based on an escalation factor of 2.6% in 2015,<sup>8</sup> would be \$80,028 per year and for FY 2018-19 it would be \$160,056 for a total of 4 programs

<sup>8</sup> U.S. Bureau of Labor Statistics (2016). Medical Care CPI. <http://data.bls.gov/pdq/SurveyOutputServlet>.

## Existing Providers (Settings other than ADC facilities)

Nursing homes, in-home care providers, assisted living facilities providing respite care per licensure rule, and other entities that currently provide overnight respite services may sustain losses if participants transfer their business to ADC facilities. There is no data on numbers of respite residents in these other settings and no way of estimating what percentage of ADC or ORP participants will be transferring from them.

## **V. Benefit Estimates**

### Participants and Families

The most important benefit of the existence of overnight respite programs is in providing caregiving relief and space from caregiving and the peace of mind of a safe setting and care during the respite period. These benefits cannot be quantified, but surveys of caretakers indicate that respite from care provides emotional and physical benefits to the caretaker including self-reported improvements in quality of life and lower stress.<sup>9</sup> It is unclear whether these rules will improve the availability of overnight respite services in the state.

The benefits generated directly by these proposed rules include additional choices for caregivers in the setting of overnight respite services, continuity of care for the recipient, and a simpler enrollment process compared to other ORP settings. Overnight respite services are currently available to caretakers through various in-home care providers, residential care institutions, skilled nursing facilities, and hospitals. Comprehensive cost data from these alternative care settings is not readily available. In 2011, Resources for Seniors, an organization providing information and support to Raleigh-area seniors, listed 19 assisted living facilities and 11 nursing homes that provided short-term overnight respite services. These facilities charged between \$100-200 per night.<sup>10</sup> Based on the pilot, the fees charged by ADCs are comparable to these settings. While licensing overnight respite programs in ADCs does not create any immediate financial savings for caregivers, more choices in the overnight respite setting may benefit both caregivers and recipients; in the long run, increased competition may lower prices, increase service quality, or both. In addition, caregivers and recipients who already participate in an ADC program may benefit from convenience and increased continuity of care as ADC staff are familiar with the recipient and their needs.<sup>11</sup>

Secure care of a loved one in an ADC is an alternative to short- or long-term care in a setting such as assisted living (AL). Occasional breaks from caregiving at home, particularly from the strain of overnight caregiving, can allow for greater stability and capacity to provide care in the home setting over the long term, which may help delay or avoid institutional care. However, empirical evidence is limited and conflicting.<sup>12</sup> Avoiding or delaying institutionalization through providing respite creates financial benefits for caregivers. AL is estimated at \$3500/mth. for a semi-private room for a private-pay resident or \$42,000/yr./resident (based on average figures from the North Carolina Assisted Living Association, the

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<sup>9</sup> National Respite Coalition, Lifespan Respite Task Force (2006). *Cost Savings Due to Respite*. Retrieved from <http://lx.iriss.org.uk/sites/default/files/resources/costsavings.pdf>

Fields, N.L., Anderson, K.A., & Dabelko-Schoeny, H. (2014). The effectiveness of adult day services for older adults: A review of the literature from 2000 to 2011. *Journal of Applied Gerontology*, 33, 130163

<sup>10</sup> Resources for Seniors, (2011). *Facility Based Respite Options*. Retrieved from <http://www.resourcesforseniors.com/pdf/facilityrespite.pdf>

<sup>11</sup> North Carolina General Assembly, Program Evaluation Division. (2014). *Overnight Respite Pilot at Adult Day Care Facilities Perceived as Favorable, but Lacked Objective Measures of Success*. Retrieved from [http://www.ncleg.net/PED/Reports/documents/Respite/Overnight\\_Respite\\_Report.pdf](http://www.ncleg.net/PED/Reports/documents/Respite/Overnight_Respite_Report.pdf)

<sup>12</sup> Zarit, S. H., Gaugler, J. E. and Jarrott, S. E. (1999), Useful services for families: research findings and directions. *Int. J. Geriatr. Psychiatry*, 14: 165–178

provider association with a majority of private-pay facilities). At \$203/day for overnight respite services as based on figures from pilot overnight respite services and a maximum of 60 overnight respite days per year by law, the annual cost is \$12,180 per participant if all respite nights are fully utilized. That's a difference in cost to private payees of \$29,820.

#### Overnight Respite Program Providers

The proposed rules allow adult day care providers to offer additional services to their communities and generate new revenue streams. Revenues for ORPs would equal the expected fees paid by participants. At \$203 per respite day and an average of 192 respite days, the estimated revenues for one program would be \$38,976 per year.

#### Local, State, and Federal Governments

The proposed rule does not create any direct benefits to state, local, or federal governments.

Tax revenue is not expected to change as a result of this rule. The majority of ADC facilities are nonprofits.

If care recipients who were not receiving overnight respite services in other settings participate in newly established programs, state and federal governments could see indirect health care cost savings from avoided or delayed institutionalizations. These indirect benefits could be substantial considering the greater cost of care in long-term care settings such as nursing homes and assisted living facilities versus short term overnight respite stays. The proportion of ORP participants that will be new participants as compared to consumers that will transfer from other overnight respite care settings cannot be estimated.

### **VI. Non-Substantial Impact**

As presented above, the estimated fiscal year costs and benefits from the proposed adoption of these rules do not together amount to \$1 million or more; therefore, the Division estimates there would not be a substantial economic impact as a result of the proposed adoption of the 10A NCAC 13E rules.

### **VII. Summary**

The proposed adoption of the 10A NCAC 13E rules will result in a non-substantial impact to the State. This impact will result from: DHSR Construction Section staff time spent on plan review and inspections; DHSR ACLS staff time spent on policy review, inspections and report writing and staff travel and subsistence costs. The State's total fiscal year cost impact for FY 2016-17, FY 2017-18 and FY 2018-19 is \$14,444, \$64,059 and \$90,429, respectively.

For the ORP provider, the proposed adoption of the 10A NCAC 13E rules will result in a non-substantial impact due to costs related to: state fees, architect design fees, facility design and construction, furniture acquisition, licensing fees, policy development, staff training and food costs. The total fiscal year cost impact to ORPs for FY 2016-17, FY 2017-18 and FY 2018-19 is \$79,866 \$160,254 and \$338,482 respectively.

For participants and family members, the proposed adoption of the 10A NCAC 13E rules will result in a non-substantial impact due to costs related to payment for respite services. The total fiscal year cost impact to participants and family members for FY 2016-17, FY 2017-18 and FY 2018-19 is \$80,028, \$80,028 and \$ 160,056 respectively.

The direct benefits of the proposed adoption of the 10A NCAC 13E rules include the creation of additional care setting options for caregivers and enhanced continuity of care for ORP participants. It is unclear whether these rules will improve the availability of overnight respite services in the state.

Finally, the total estimated fiscal year cost impact to the State, ORPs, family members and participants is indicated in Table C13 for FY 2016-17, FY 2017-18 and FY 2018-19 is \$174,338, \$304,341 and \$588,967 respectively. Costs and benefits will continue to increase in the future if additional ORPs are licensed.

Table C13 - Summary of Total Aggregate Net Fiscal Year Impact

	FY 2016-17	FY 2017-18	FY 2018-19
<b>Costs</b>			
State Government	\$(14,444)	\$(64,059)	\$(90,429)
ADC ORP Provider	\$(79,866)	\$(160,254)	\$(338,482)
Families and Participants	\$(80,028)	\$(80,028)	\$(160,056)
Existing ORP Provider	-T	-T	-T
Total Costs	(\$174,338) -T	(\$304,341) -T	(\$588,967) -T
<b>Benefits</b>			
State Government	-	-	-
ADC ORP Provider	\$77,952	\$77,952	\$155,904
Families and Participants	+C	+C	+C
Existing ORP Provider	-	-	-
Total Benefits	\$77,952 +C	\$77,952 +C	\$155,904 +C
<b>Total Net Impact</b>	\$(96,386) +C -T	\$(226,389) +C -T	\$(433,063) +C -T
<b>Net Present Value, 2016 dollars</b> (7% discount rate)	(\$641,326) +C -T		

T represents lost business to existing ORP providers due to clients transferring to ADC facilities. This cost cannot be quantified.

C represents the unquantified private benefit of increased consumer choice in care settings, increased convenience, and continuity of care for current ADC participants.



## Appendix 1 – Proposed Rule Text

10A NCAC 13E .0101 is proposed for adoption as follows:

### SUBCHAPTER 13E – LICENSING OF OVERNIGHT RESPITE SERVICES

#### SECTION .0100 DEFINITIONS

##### 10A NCAC 13E .0101 DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "Program" means a facility certified by the Department of Health and Human Services, Division of Aging and Adult Services to provide adult day care services pursuant to G.S. 131D-6, and 10A NCAC Chapter 06, Subchapter R, or adult day health services pursuant to 10A NCAC Chapter 06, Subchapter S, or both.
- (2) "Overnight respite services" means the provision of 24-hour supervision and personal care services to persons on a temporary basis for caregiver relief, not to exceed 14 consecutive days, or more than 60 total calendar days per individual participant in a 365-day period, and is provided by a program.
- (3) "Personal care" means tasks such as assistance with bathing, dressing, grooming, toileting, eating, ambulation, transferring, and other personal care needs.
- (4) "Participant" means the recipient of the overnight respite services.
- (5) "Responsible party" means the caretaker with primary day-to-day responsibility for a participant.
- (5) "Supervision" means to oversee, manage, and direct for the determination and provision of assistance to a participant.
- (6) "Accident" means an unexpected, unintentional, or irregular event that results in injury or illness to a participant or suspected injury or illness to a participant.

*History Note:* Authority G.S. 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0201 is proposed for adoption as follows:

#### SECTION .0200 – LICENSING

##### 10A NCAC 13E .0201 APPLYING FOR A LICENSE TO PROVIDE OVERNIGHT RESPITE SERVICES

(a) Except as otherwise provided in Rule .0202 of this Section, the Division of Health Service Regulation (DHSR) shall issue an overnight respite services license to any program that meets the following requirements:

- (1) submission of an initial license application, incorporated herein by reference including subsequent amendments and editions, and may be obtained online at <https://www.ncdhhs.gov/dhsr/acls/acforms.html> at no cost that includes the following:
  - (A) applicant information;
  - (B) ownership information;
  - (C) operation information; and
  - (D) capacity and scope of services;
- (2) payment of a non-refundable license fee as required by G.S. 131D-6.1; and
- (3) compliance with the provisions of G.S. 131D-6.1 and the Rules of this Subchapter.

(b) An application for a license to provide overnight respite services shall not be reviewed or approved unless the applicant is certified by the Division of Aging and Adult Services as an adult day care program pursuant to G.S. 131D-6.

(c) Following review of the initial license application, program policies in accordance with Rule .0501 of this Subchapter, and the Construction Section's recommendation for use, a pre-approval visit shall be made by a consultant of the DHSR Adult Care Licensure Section. The consultant shall report findings and recommendations to the Adult Care Licensure Section following the pre-approval visit. The Adult Care Licensure Section shall notify, in writing, the Division of Aging and Adult Services and the applicant of the decision to approve or deny a license to provide overnight respite services as a part of the adult day care program.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0202 is proposed for adoption as follows:

**10A NCAC 13E .0202 PERSONS NOT ELIGIBLE FOR OVERNIGHT RESPITE SERVICES LICENSES**

A new license shall not be issued for an overnight respite services program to an applicant who was the owner of an overnight respite services program in the following circumstances until:

- (1) for an applicant whose license was revoked, one year after the date of revocation; or
- (2) for an applicant whose admissions were suspended, six months after the suspension is lifted.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0203 is proposed for adoption as follows:

**10A NCAC 13E .0203 THE LICENSE**

- (a) The license shall be posted in a prominent location, accessible to public view, within the overnight respite portion of the facility.
- (b) The license shall be in effect for 12 months from the date of issuance unless revoked for cause or voluntarily or involuntarily terminated.
- (c) The license is not transferable or assignable.
- (d) The license shall be terminated when the program is terminated.

*History Note:* Authority G.S. 131D-2.4; 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0204 is proposed for adoption as follows:

**10A NCAC 13E .0204 RENEWAL OF LICENSE**

- (a) The license shall be renewed annually, except as otherwise provided in Rule .0205 of this Section, if the licensee submits an application for renewal and the Department determines that the licensee complies with the provisions of G.S. 131D-6.1 and the Rules of this Subchapter. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of the license, the Department may approve an extension of a plan of correction or may revoke the license for cause.
- (b) The license renewal application shall be sent to the applicant by the Department at least 60 days prior to expiration of the license.
- (c) The license renewal application shall include the following:
  - (1) applicant information;
  - (2) ownership information;
  - (3) operation information;
  - (4) capacity and scope of services; and
  - (5) invoice for the annual nonrefundable renewal licensure fee in accordance with G.S. 131D-6.1(i).

*History Note:* Authority G.S. 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0205 is proposed as a temporary rule as follows:

**10A NCAC 13E .0205 CLOSING OF OVERNIGHT RESPITE SERVICES**

If a licensee plans to close its overnight respite services, the licensee shall provide written notification of the planned closing to the Division of Health Service Regulation, Adult Care Licensure Section, at 2708 Mail Service Center, Raleigh, NC 27699-2708; the Division of Aging and Adult Services at 2101 Mail Service Center, Raleigh, NC 27699-2101; the participants; and their responsible party at least 30 days prior to the planned closing. Written notification shall include date of closing.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0206 is proposed for adoption as follows:

**10A NCAC 13E .0206 DENIAL AND REVOCATION OF LICENSE**

- (a) The Division of Health Service Regulation shall deny any licensure application upon the applicant's failure to comply with G.S. 131D-6.1 and the Rules of this Subchapter.
- (b) Denial by the Division shall be effected by mailing to the applicant, by certified mail, a notice setting forth the particular reasons for such denial.
- (c) A license may be revoked by the Division in accordance with G.S. 131D-2.7 and G.S. 131D-6.1.
- (d) When an overnight respite service provider receives a notice of revocation, the administrator shall inform each participant and his or her responsible party of the notice and the basis on which the revocation was issued.

*History Note: Authority G.S. 131D-2.7; 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0207 is proposed to be adopted as follows:

**10A NCAC 13E .0207 SUSPENSION OF ADMISSIONS**

- (a) The Division of Health Service Regulation may suspend the admission of participants to overnight respite services when warranted under the provisions of G.S. 131D-6.1 and G.S. 131D-2.7.
- (b) The Division shall notify the overnight respite service licensee by certified mail of the decision to suspend admissions. Such notice will include:
  - (1) the period of the suspension;
  - (2) factual allegations;

(3) citation of statutes and rules alleged to be violated; and

(4) notice of the licensee's right to a contested case hearing regarding the suspension.

(c) The suspension is effective on the date specified in the notice of suspension. The suspension shall remain effective for the period specified in the notice, or until the overnight respite service demonstrates to the Division that conditions are no longer detrimental to the health and safety of the participants.

(d) The overnight respite service shall not admit any participants during the effective period of the suspension.

(e) Any action taken by the Division to revoke a license for overnight respite services shall be accompanied by a suspension of admissions. A suspension may be ordered without the license being affected.

*History Note: Authority G.S. 131D-2.7; 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0208 is proposed for adoption as follows:

**10A NCAC 13E .0208 APPEAL OF LICENSURE ACTION**

The licensee may appeal any decision of the Division to deny or revoke a license or any decision to suspend admissions by making such an appeal in accordance with G.S. 150B.

*History Note: G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0301 is proposed for adoption as follows:

**SECTION .0300 - PHYSICAL PLANT RULES**

**10A NCAC 13E .0301 SUBMISSION OF INFORMATION TO THE DIVISION OF HEALTH SERVICE  
REGULATION CONSTRUCTION SECTION**

(a) Prior to operation, an applicant for a license to provide overnight respite services shall submit the following documents to the Division of Health Service Regulation (DHSR) Construction Section:

(1) an approval letter from the local zoning jurisdiction for the proposed location;

(2) if an existing structure, a photograph of each side of the existing structure and at least one of each of the interior spaces; and

(3) a set of building plans of each floor level indicating:

(A) the layout of all rooms;

(B) room dimensions (including closets);

- (C) door widths (exterior, bedroom, bathroom, and kitchen doors);
- (D) window sizes and window sill heights;
- (E) type of construction; and
- (F) the proposed participant bedroom locations including the number of occupants in each bedroom.

(b) The Construction Section shall review the documents and notify the applicant by letter of changes that must be made to the building to meet the standards established in Section .0300 of this Subchapter. The letter shall also contain a list of final documentation required from the local fire marshal, local building code official and county health department that shall be submitted upon completion of any required changes to the building or completion of construction.

(c) In order to maintain compliance with the standards established in Section .0300 of this Subchapter, any changes made during construction that were not proposed during the document review required by Paragraph (b) of this Rule shall require the approval of the Construction Section.

(d) Upon receipt of the final documentation required by Paragraph (b) of this Rule, the Construction Section shall review the information and may either approve the overnight respite services program for construction based on documentation or make an on-site visit. If an on-site visit is made, the Construction Section shall inspect the construction and shall notify the applicant by letter of any changes that must be made to the construction. When the Construction Section determines that the completed construction is in compliance with the standards established in Section .0300 of this Subchapter, it shall notify the Division of Health Service Regulation Adult Care Licensure Section of its recommendation for use.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0302 is proposed for adoption as follows:

**10A NCAC 13E .0302 CAPACITY**

(a) Pursuant to G.S. 131D-6.1(c)(8), the Division of Health Service Regulation shall not approve a capacity for an overnight respite services program of greater than six participants. For the purposes of this Rule, “capacity” means the maximum number of participants that the overnight respite services program is licensed to maintain at any given time.

(b) An overnight respite services program shall not exceed the capacity shown on its license.

(c) Prior to an increase in capacity by adding rooms, altering rooms, or changing use of space, the overnight respite services program shall submit a request for capacity increase and two building plans of each floor to the Construction Section. One plan shall indicate the current use of rooms in the existing building. The other plan shall indicate the proposed use of rooms in the existing building and its addition, alteration, or change in use of space. For an addition

to an existing building, the building plans shall also indicate how the addition will be tied into the existing building and any proposed changes to the building structure.

(d) When the overnight respite services program increases its capacity by the addition to or alteration of an existing building, the entire overnight respite services program shall comply with the North Carolina Fire Prevention Code, which is incorporated herein by reference, including all subsequent amendments and editions. Copies of this code may be purchased from the International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of eighty-five dollars (\$85.00) or accessed electronically free of charge at [http://codes.iccsafe.org/app/book/toc/2012/North\\_Carolina/Fire/index.html](http://codes.iccsafe.org/app/book/toc/2012/North_Carolina/Fire/index.html).

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0303 is proposed for adoption as follows:

**10A NCAC 13E .0303 DESIGN AND CONSTRUCTION**

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

- (1) “facility” means a building or portion of a building housing an overnight respite services program as defined in G.S. 131D-6.1(a);
- (2) “proposed facility” means the new construction of a building for a facility, an addition or alteration to an existing building for a facility, or the change in use of a building for a facility.
- (3) “existing facility” means a currently licensed facility and a proposed facility that will be built according to building plans approved by the Construction Section for compliance with the standards established in Section .0300 of this Subchapter, prior to the effective date of this Rule; and
- (4) “new facility” means a proposed facility that will be built according to building plans approved by the Construction Section for compliance with the standards established in Section .0300 of this Subchapter, on or after the effective date of this Rule.

(b) The physical plant requirements for each facility shall be applied as follows:

- (1) A new facility shall meet the standards established in Section .0300 of this Subchapter.
- (2) An existing facility shall meet the standards established in Section .0300 of this Subchapter that were in existence at the time of change in use of space, construction, addition, alteration, or repair.
- (3) An existing building converted from another use that a program intends to use for an overnight respite services program shall meet all the requirements of a new facility as indicated in Subparagraph (1) of this Paragraph.

(c) For a new facility, new construction or an addition or alteration to an existing building shall meet the requirements of the North Carolina State Building Codes, which are incorporated herein by reference, including all subsequent amendments and editions. Copies of these codes may be purchased from the International Code Council online at

<http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of five hundred twenty-seven dollars (\$591.00) or accessed electronically free of charge at <http://codes.iccsafe.org/North%20Carolina.html>. For an existing facility, construction, addition, alteration, or repair shall meet the requirements of the North Carolina State Building Codes in effect at the time of construction, addition, alteration, or repair.

(d) A facility shall be constructed, equipped, and maintained to comply with the standards established in Section .0300 of this Subchapter for the total number of participants indicated on its license.

(e) Rules contained in Section .0300 of this Subchapter are minimum requirements and are not intended to prohibit buildings, systems, or operational conditions that exceed these minimum requirements.

(f) The Construction Section may grant an equivalency to allow an alternate design or functional variation from the requirements of the Rules contained in Section .0300 of this Subchapter. For the purposes of this Rule, an “equivalency” is a Construction Section approved alternate design and functional variation to a Rule requirement that meets the intent of the Rule requirement, but does not reduce the safety and operational effectiveness of the facility design and layout. If granted, the equivalency shall apply to a specific facility. If the following occurs, a program shall be granted an equivalency:

(1) \_\_\_\_\_ the overnight respite services program submits a written equivalency request to the Construction Section indicating:

(A) \_\_\_\_\_ the Rule requirement, which will not be met;

(B) \_\_\_\_\_ the justification for the equivalency; and

(C) \_\_\_\_\_ how the proposed equivalency meets the intent of the corresponding Rule requirement;

(2) \_\_\_\_\_ the Construction Section reviews the equivalency request; and

(3) \_\_\_\_\_ the program receives a written approval of the equivalency from the Construction Section.

(g) If any of the rules, codes, or standards contained in Section .0300 of this Subchapter conflict, the most stringent requirement shall apply.

(h) For an existing facility that has its license revoked or suspended by the Division of Health Service Regulation pursuant to G.S. 131D-6.1(g)(2) for at least 60 days, the existing facility shall meet the requirements of a new facility as indicated in Paragraph (b)(1) of this Rule prior to being relicensed.

(i) Prior to commencement of construction or change in use of space, any program intending to offer overnight respite care services that is planning new construction, an addition or alteration to an existing building, or a change in use of space shall submit building plans and other documents to the Construction Section as specified in Rule .0301 of this Section.

(j) If the building to be used for a facility is two or more stories in height, it shall meet the following additional requirements:

(1) \_\_\_\_\_ construction shall not exceed the allowable area for occupancy in the North Carolina State Building Code;

(2) \_\_\_\_\_ participants shall be housed on the level of the principal exterior door as defined in Rule .0312(c) of the Section; and

(3) \_\_\_\_\_ participant-use areas shall be located on the level of the principal exterior door.



- (k) The basement and the attic shall not to be used for storage or sleeping.
- (l) The ceiling shall be at least seven and one-half feet from the floor.
- (m) Elevation changes in the level of the floor are not permitted in participant-use areas.
- (n) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living room, bedrooms, and bathrooms.
- (o) Windows shall be operable and shall be maintained operable. For the purposes of this Rule, “operable” means a window that may be opened and shut to allow outdoor-air ventilation. To inhibit participant elopement from any window, the window opening may be restricted to a six-inch opening.
- (p) Before starting any construction or alterations, the overnight respite services program shall consult with the local building code official for information on required permits and construction requirements.
- (q) The facility shall comply with the sanitation rules of the North Carolina Division of Public Health, Environmental Health Services Section, which are incorporated herein by reference, including subsequent amendments and editions. The “Rules Governing the Sanitation of Residential Care Facilities”, 15A NCAC 18A .1600 are available for inspection at the North Carolina Department of Health and Human Services, Division of Public Health, Environmental Health Services Section, 5605 Six Forks Road, Raleigh, North Carolina 27509. Copies may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost or can be accessed electronically free of charge at <http://ehs.ncpublichealth.com/docs/rules/294306-4-1600.pdf>.
- (r) The facility shall have the following inspection reports available for review upon request by the Construction Section:
- (1) a current sanitation inspection report from the county health department; and
  - (2) a fire safety inspection report from the local fire marshal.
- (s) A fire alarm system with pull stations on each floor and sounding devices that are audible throughout the building shall be installed. The fire alarm system shall be equipped to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection. The fire alarm system shall be installed in accordance with National Fire Protection Association (NFPA) 72, which is incorporated herein by reference including subsequent amendments and editions and may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of ninety six dollars and 50 cents (\$96.50). Underwriters Laboratory (U.L.) listed heat detectors are required in attics and basements and shall be connected to the fire alarm system. These heat detectors shall be interconnected and be provided with battery backup. Corridors shall be equipped with smoke detectors that are connected to the fire alarm system.
- (t) The building housing the overnight respite services program and the adult day care or adult health care programs shall be equipped with a wet pipe sprinkler system in accordance with NFPA 13, which is incorporated herein by reference including subsequent amendments and editions and may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of one hundred and three dollars (\$103.00).

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0304 is proposed for adoption as follows:

**10A NCAC 13E .0304 LOCATION**

- (a) A program offering overnight respite care services shall be in a location approved by local zoning boards.
- (b) The site of a proposed facility where overnight respite care services are to be provided shall:
  - (1) be accessible by public roads that shall be maintained for motor vehicles access;
  - (2) be accessible to fire fighting and other emergency services;
  - (3) have a water supply, sewage disposal system, garbage disposal system, and trash disposal system approved by the local health department having jurisdiction;
  - (4) meet local ordinances; and
  - (5) be free from exposure to waste material that contaminates the air, soil, or water.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0305 is proposed for adoption as follows:

**10A NCAC 13E .0305 LIVING ROOM**

- (a) Each overnight respite care program shall have a living area with not less than 40 square feet of floor area per participant.
- (b) Once the requirements of 10A NCAC 06R .0401(d) for an adult day care program and 10A NCAC 06S .0301 for an adult day health program are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the living area for the overnight respite care program required by Paragraph (a) of this Rule may be combined with the adult day care program or adult day health program activities and craft areas.
- (c) The living room shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the floor area required by Paragraph (a) of this Rule.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0306 is proposed for adoption as follows:

**10A NCAC 13E .0306 DINING ROOM**

- (a) Each overnight respite services program shall have a dining area with not less than 20 square feet of floor area per participant. The dining area may be used for other activities during the day.

(b) Once the requirements of 10A NCAC 06R .0401(d) for an adult day care program and 10A NCAC 06S .0301 for an adult day health program are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the dining area for the overnight respite care program required by Paragraph (a) of this Rule may be combined with the adult day care program or adult day health program activities and craft areas.

(c) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space between the kitchen and dining areas. The work space shall not be used as the dining area.

(d) The dining room shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the floor area required by Paragraph (a) of this Rule.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0307 is proposed for adoption as follows:

**10A NCAC 13E .0307 KITCHEN**

(a) The kitchen shall be sized by the overnight respite services program to provide for the preparation and preservation of food and the washing of dishes. The kitchen may be shared with the program.

(b) The cooking unit shall be mechanically ventilated to the exterior or be equipped with an unvented recirculation fan provided with a filter as required by the manufacturer's instructions for vent-less use.

(c) The kitchen floor shall have a non-slippery and water-resistant covering.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0308 is proposed for adoption as follows:

**10A NCAC 13E .0308 BEDROOMS**

(a) There shall be bedrooms sufficient in number and size to meet the individual needs of the participant according to their age and gender.

(b) Only rooms authorized by the Construction Section for use as bedrooms shall be used as bedrooms.

(c) A room where access is only through a bathroom, kitchen, or another bedroom shall not be approved for a participant's bedroom.

(d) Bedrooms occupied by one participant shall be provided with not less than 100 square feet of floor area, including vestibule, closet, or wardrobe space. Bedrooms occupied by two participants shall be provided with not less than 100 square feet of floor area, including vestibule, closet, or wardrobe space.

(e) The total number of participants assigned to a bedroom shall not exceed the number authorized by the Construction Section for that particular bedroom.

(f) A bedroom shall not be occupied by more than two participants.

(g) Each participant bedroom shall have one or more windows with views to the outdoors. The gross window area shall be equal to at least eight percent of the floor space required by Paragraph (d) of this Rule. The windows shall have a maximum sill height of 44 inches.

(h) Bedroom closets or wardrobes shall be large enough to provide each participant with a minimum of 22 cubic feet of clothing storage, one-half of which shall be for hanging clothes with an adjustable-height hanging bar.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0309 is proposed for adoption as follows:

#### **10A NCAC 13E .0309 BATHROOM**

(a) The overnight respite services program shall have one bathroom for each six or fewer respite participants. A bathroom shall contain a water closet, a lavatory, and one of the following:

(1) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use;

(2) a bathtub accessible on three sides; or

(3) a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of participants into the bathtub that is accessible on one short side and one long side of the bathtub.

(b) Once the requirements of 10A NCAC 06R .0401(g) for an adult day care facility and 10A NCAC 06S .0301 for an adult day health facility are met as determined by the Division of Aging and Adult Services of the Department of Health and Human Services, the bathroom required by Paragraph (a) of this Rule may be shared with the adult day care program or adult day health program.

(c) A bathroom shall be designed to provide privacy. A bathroom with two or more water closets shall have privacy partitions or curtains for each water closet. Each bathtub or shower shall have privacy partitions or curtains.

(d) The entrance to the bathroom shall not be through a kitchen, another participant's bedroom, or another bathroom.

(e) The bathroom shall be located so that there is no more than 40 feet from any participant's bedroom door to a participant-use bathroom door.

(f) Hand grips shall be installed at all water closets, bathtubs, and showers used by participants.

(g) Nonskid surfacing or strips shall be installed to the floor or bottom of showers and bathtubs.

(h) A bathroom shall have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. The mechanical ducted vent shall be vented directly to the outdoors.

(i) The bathroom floor shall have a non-slippery water-resistant covering.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0310 is proposed for adoption as follows:

**10A NCAC 13E .0310 STORAGE AREAS**

(a) Storage areas shall be provided for the separate storage of clean linens, soiled linens, food and food service supplies, and household supplies and equipment.

(b) Cleaning agents, bleaches, pesticides, and other substances that may be hazardous if ingested, inhaled, or handled shall be stored in locked areas separate from other materials.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0311 is proposed for adoption as follows:

**10A NCAC 13E .0311 CORRIDOR**

(a) Corridors shall be lighted as required by Rule .0317(e)(3) of this Section.

(b) Corridors shall be free of equipment and other obstructions.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0312 is proposed for adoption as follows:

**10A NCAC 13E .0312 OUTSIDE ENTRANCE AND EXITS**

(a) Each overnight respite services program shall have at least two exit doors on all floor levels. If there are only two exit doors, the exit or exit access door shall be located and constructed to minimize the possibility that both may be blocked by a fire or other emergency condition.

(b) One exterior door shall have a minimum width of three feet. Another exterior door shall have a minimum width of two feet and eight inches. For the purposes of this Rule, an “exterior door” means a door used by a participant to enter the building from the outdoors and to exit the building to the outdoors.

(c) At least one principal exterior door for the participants’ use shall be at grade level or accessible by a ramp with a one inch rise for each 12 inches of ramp length. For the purposes of this Rule, a “principal exterior door” means a door that is used by participants to access the vehicular pick-up and drop-off area. If the overnight respite services

program serves any participant who must have physical assistance with evacuation, the building shall have two exterior doors at grade level or accessible by a ramp.

(d) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without keys. Deadbolts or turn buttons on the inside of exit doors shall be disabled.

(e) Exit doors shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops, and ramps shall be provided with handrails or guardrails.

(g) In each overnight respite services program with at least one participant who is determined by a physician or is otherwise known to be disoriented or who wanders, each exit door for participant-use shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office area or in a location accessible only to staff authorized by the administrator to operate the control panel.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0313 is proposed for adoption as follows:

#### **10A NCAC 13E .0313 LAUNDRY ROOM**

If the facility uses laundry equipment, the equipment shall not be located in the living, dining, or bedroom areas.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0314 is proposed for adoption as follows:

#### **10A NCAC 13E .0314 FLOORS**

(a) All floors shall be of smooth, non-skid material and shall be cleanable.

(b) Scatter or throw rugs shall not be used.

(c) All floors shall be kept free of damage.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0315 is proposed for adoption as follows:

**10A NCAC 13E .0315 HOUSEKEEPING AND FURNISHINGS**

(a) Each overnight respite services program shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean, well maintained, and free of damage;
- (2) have no lingering odors;
- (3) have furniture clean and free of damage;
- (4) have a North Carolina Environmental Health Services Section approved sanitation classification at all times;
- (5) be maintained in an uncluttered, clean, and orderly condition, free of all obstructions and hazards;
- (6) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings adequate for participant use on hand at all times;
- (7) make available the following items as needed but shall not charge the participant's personal funds for the cost of these items:
  - (A) protective sheets; and clean, absorbent, soft, and smooth pads;
  - (B) bedpans, urinals, hot water bottles, and ice bags; and
  - (C) bedside commodes, walkers, and wheelchairs;
- (8) have a television and radio, each in good working order;
- (9) have curtains, draperies, shades, or blinds at all windows in participant-use areas to provide for participant privacy;
- (10) have recreational equipment, supplies for games, books, magazines, and a current newspaper available for participants;
- (11) have a clock that has numbers at least 1½ inches tall in an area commonly used by the participants; and
- (12) have at least one working telephone that does not depend on electricity or cellular service to operate.

(b) Each bedroom shall have the following furnishings for each participant:

- (1) beds equipped with box springs and mattress, solid link springs and no-sag innerspring, or a foam mattress. A hospital bed shall be provided as needed. A water bed may be allowed if requested by a participant and permitted by the overnight respite services program. Each bed shall have the following:
  - (A) at least one pillow with clean pillow case;
  - (B) clean top and bottom sheets on the bed, changed at least once a week; and
  - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside-type table;
- (3) a chest of drawers or bureau for a single participant or a double chest of drawers or double dresser for two participants when not provided as built-ins;
- (4) a wall or dresser mirror;

- (5) a minimum of one comfortable chair per participant, high enough from the floor for easy rising;
- (6) additional chairs available, as needed, for use by visitors;
- (7) individual clean towel, wash cloth, and towel bar within the bedroom or adjoining bathroom; and
- (8) a wall-mounted light overhead of the bed or a lamp with a switch within reach of a person lying on the bed. The light shall provide a minimum of 30 foot-candle power of illumination for reading.

(c) The living room shall have functional living room furnishings for the comfort of participants with coverings that are easily cleanable.

(d) The dining room shall have the following furnishings:

- (1) tables and chairs to seat all participants eating in the dining room; and
- (2) chairs that are sturdy, non-folding, without rollers unless retractable or on front legs only, and designed to minimize tilting.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0316 is proposed for adoption as follows:

**10A NCAC 13E .0316 FIRE SAFETY AND DISASTER PLAN**

(a) Fire extinguishers shall be provided that meet these requirements:

- (1) one five-pound or larger (net charge) "A-B-C" type centrally located;
- (2) one five-pound or larger "A-B-C" or CO/2 type located in the kitchen; and
- (3) at any other location as required by the North Carolina Fire Prevention Code, which is incorporated herein by reference including subsequent amendments and editions.

(b) Any fire safety requirements required by city or county ordinances shall be met.

(c) A written fire evacuation plan that includes a diagrammed drawing and that has the approval of the local fire marshal shall be prepared and posted in a central location on each floor. The plan shall be reviewed with each participant on enrollment and shall be a part of the orientation for new staff.

(d) There shall be at least four rehearsals of the fire evacuation plan each year on each shift. Records of rehearsals shall be maintained. The records shall include the date and time of the rehearsals, staff members present, and a description of what the rehearsal involved.

(e) A written disaster plan that has the written approval of, or has been documented as submitted to, the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters shall be prepared and updated at least annually and shall be maintained in the program offering overnight respite care services. This Paragraph applies to new and existing overnight respite services programs, adult day care programs, and adult day health programs.



*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0317 is proposed for adoption as follows:

**10A NCAC 13E .0317 BUILDING SERVICE EQUIPMENT**

(a) The building and all fire safety, electrical, mechanical, and plumbing equipment shall be maintained in a safe and operating condition.

(b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected so as to avoid hazards to participants and room furnishings. Unvented fuel burning room heaters and portable electric heaters shall be prohibited.

(c) Air conditioning shall provide conditions not to exceed 81 degrees F (27 degrees C) under summer design conditions.

(d) The hot water tank shall be of such size to provide as much hot water as is needed by the kitchen, bathrooms, and laundry. The hot water temperature at all fixtures used by participants shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All participant-use areas shall be lighted for the safety and comfort of the participants. The minimum lighting required is:

- (1) 30 foot-candle of light at floor level in living rooms, dining rooms, bedrooms, and bathrooms;
- (2) 10 foot-candle of light for general lighting; and
- (3) one foot-candle of light at the floor for corridors at night.

(f) Fireplaces, fireplace inserts, and wood stoves shall be designed or installed so as to avoid a burn hazard to participants. Fireplace inserts and wood stoves must be Underwriters Laboratories (U.L.) listed.

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved by the local building code official, and protected by a guard or screen to prevent participants and furnishings from burns.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0318 is proposed for adoption as follows:

**10A NCAC 13E .0318 OUTSIDE PREMISES**

(a) The outside grounds of the program shall be maintained in a clean and safe condition.

(b) If the facility has a fence around the premises, the fence shall not prevent participants from exiting or entering freely and shall not be hazardous.

(c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0401 is proposed for adoption as follows:

### **SECTION .0400 – STAFF QUALIFICATIONS AND STAFFING**

#### **10A NCAC 13E .0401 ADMINISTRATOR**

(a) An administrator shall be responsible for the operations of the program offering overnight respite care services.

(b) At all times, there shall be one administrator or supervisor-in-charge who is responsible for assuring that all required duties are carried out and for assuring that a staff member is present on-site and available to the program participants.

(c) The administrator shall:

(1) be at least 21 years old;

(2) be at least a high school graduate or certified under the General Educational Development (GED) Program;

(3) cooperate with inspectors and DHHS employees in assuring compliance with G.S. 131D-6.1 and the Rules of this Subchapter;

(4) have a tuberculin skin test within 12 months prior to hire date and annually thereafter;

(5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256;

(6) have documented evidence of managing or supervising personal care to others for at least 6 months from a current or previous employer; and

(7) be able to implement all accident, fire safety, and emergency procedures for the protection of the participants of the overnight respite services program.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0402 is proposed for adoption as follows:

**10A NCAC 13E .0402 SUPERVISOR-IN-CHARGE**

(a) The supervisor-in-charge is responsible to the administrator for the operation of the overnight respite services program in the absence of the administrator.

(b) The supervisor-in-charge shall meet the same requirements as the administrator as set forth in Rule .0401(c) of this Section.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0403 is proposed for adoption as follows:

**10A NCAC 13E .0403 STAFF AND STAFFING**

(a) Each staff person shall:

- (1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
- (2) have a tuberculin skin test within 12 months prior to hire and annually thereafter;
- (3) be able to implement all of the program's policies and procedures as defined in Rule .0501 of this Subchapter and accident, fire safety, and emergency procedures for the protection of the participants;
- (4) be informed of the confidential nature of participant information and protect and preserve the information from unauthorized use and disclosure;
- (5) not hinder or interfere with the exercise of the rights as defined by program policy;
- (6) have no substantiated findings listed on the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256;
- (7) have a statewide criminal background check, upon hire, of the past five years in accordance with G.S. 143B-932; and
- (8) cooperate with inspectors and the monitoring and licensing agencies in complying with the rules of this Subchapter.

(b) Any staff member left in charge of the care of participants shall be 18 years or older.

(c) The staffing pattern shall be adequate to meet the needs of each participant, with at least one staff present at all times qualified to administer medications as defined under Rule .0702 of this Subchapter and trained to provide personal care and supervision to current participants.

(d) Services required beyond personal care and supervision shall not be provided unless staff satisfies the license requirements required by law.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0404 is proposed for adoption as follows:

**10A NCAC 13E .0404 TRAINING ON CARDIO-PULMONARY RESUSCITATION**

At least one staff person shall be on the premises at all times, when participants are present, who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0501 is proposed for adoption as follows:

**SECTION .0500 – PROGRAM POLICIES**

**10A NCAC 13E .0501 PROGRAM POLICIES**

(a) Each program shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies shall serve as the basis for determining who will be accepted into the program and for planning activities appropriate for the participants. The policies shall prevent enrolling people whose needs cannot be met by the planned activities and services offered and shall provide for discharge of participants whose needs can no longer be met or who can no longer be cared for safely. If the program serves semi-ambulatory or non-ambulatory persons as defined under 10A NCAC 06R .0201, incorporated herein by reference including subsequent amendments and editions, it shall be stated in the enrollment criteria.

(b) The program policies shall also contain:

(1) a discharge policy outlining:

(A) the criteria for discharge;

(B) notification procedures for discharge;

(C) the timeframe and procedures for notifying the applicant, family member, or other caregiver of discharge; and

(D) referral or follow-up procedures;

- (2) medication policies and procedures as specified in Section .0700 of this Subchapter;
- (3) a description of participant's rights;
- (4) grievance policies and procedures for families;
- (5) the advance directives policy;
- (6) non-discrimination policies;
- (7) a procedure to maintain confidentiality;
- (8) a policy on reporting suspected abuse or neglect;
- (9) a policy on reporting of participant accidents or incidents to family members or medical providers;
- (10) a policy on infection control and universal precautions;
- (11) a policy on missing participants;
- (12) a policy on identification and supervision of participants who wander; and
- (13) inclement weather policies.

(c) At enrollment or in the initial interview, the program policies shall be discussed with the applicant, responsible party or other caregiver and a copy of the program policies shall be provided.

(d) Documentation of receipt of and agreement to abide by the program policies by the applicant, responsible party, or other caregiver shall be obtained by the program and kept in the participant's file.

(e) All program polices shall be maintained on site and available for inspection by Division of Health Service Regulation employees.

(f) The program shall implement all program policies.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0601 is proposed for adoption as follows:

## **SECTION .0600 - ENROLLMENT AND SERVICE PLANNING**

### **10A NCAC 13E .0601 ENROLLMENT OF PARTICIPANTS**

(a) Prior to enrollment, the applicant, responsible party, or other caregiver shall have a personal interview with a program staff member. During the interview, the staff shall complete initial documentation identifying the following:

- (1) social and medical care needs;
- (2) spiritual, religious, or cultural needs; and
- (3) whether the program can meet the applicant's expressed needs.

The staff person doing the interviewing shall sign the assessment of needs and the applicant, responsible party, or other caregiver shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a participant in the program and maintained in the participant's record.

(b) Any adult (18 years of age or over) who, because of a physical condition or mental disability, needs a substitute home for purpose of respite for the caregiver may be enrolled for overnight respite services when, in the opinion of the caregiver, family, participant, physician, or social worker and the administrator, the services and accommodations of the facility will meet the respite needs of the participant.

(c) Individuals shall not be admitted:

(1) for treatment of mental illness, alcohol or drug abuse;

(2) for maternity care;

(3) for professional nursing care under continuous medical supervision;

(4) for lodging, when the personal assistance and supervision offered for the participant are not needed;

or

(5) who pose a threat to the health or safety of others.

(d) A medical examination report signed by a physician, nurse practitioner, or physician's assistant, completed within the prior three months, shall be obtained by the program at the time of enrollment. The report must be updated annually no later than the anniversary date of the initial report.

(e) The program shall assure that the participant's physician or prescribing practitioner is contacted for orders for medications, treatments, and special diets if current physician orders are not part of the medical examination report required in Paragraph (d) of this Rule for inclusion in the participant's record. Prior to or the day of admission, the participant's physician or prescribing practitioner shall be contacted for clarification of orders, if orders are not clear or complete.

(f) The program shall assure that the participant has been tested for tuberculosis disease within the past 12 months of each admission for overnight respite services in accordance with the NC Division of Public Health's Tuberculosis Policy Manual, incorporated herein by reference including any subsequent amendments and editions, and shall be free of active tuberculosis. This manual may be accessed free of charge at <http://epi.publichealth.nc.gov/cd/lhds/manuals/tb/toc.html>.

*History Note: Authority G.S. 131D-6.1;*

*Eff. April 1, 2017.*

10A NCAC 13E .0602 is proposed for adoption as follows:

#### **10A NCAC 13E .0602 PLANNING SERVICES FOR INDIVIDUAL PARTICIPANTS**

(a) At enrollment of a new participant, the program shall perform an assessment and written service plan for the individual. The assessment shall address the individual's ability to perform activities of daily living and need for supervision while in the program. The mental and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the administrator or designee. The health component of the service plan shall be written and signed by a registered nurse.

(b) In developing the written service plan, the program shall include input from the participant, responsible party, other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs, and abilities identified in the assessment. The assessment and service plan shall be reviewed to assure continued accuracy at each admission for overnight respite services. The service plan shall include:

- (1) the needs and strengths of the participant;
- (2) the interests of the participant;
- (3) the service goals and objectives of care for the participant while in the overnight respite program;
- (4) the type of interventions to be provided by the program in order to reach desired outcomes;
- (5) the services to be provided by the program to achieve the goals and objectives;
- (6) the roles of the participant, responsible party, other caregiver, volunteers and program staff; and
- (7) the time limit for the plan, with provision for review and renewal.

(c) The participant, responsible party, other caregiver and other service providers may contribute to the development, implementation, and evaluation of the service plan.

(d) The participant's record shall include:

- (1) a copy of the medical examination report;
- (2) the written service plan;
- (3) documentation of a tuberculosis test according to Rule .0601(f) of this Section;
- (4) documentation of any contacts (office, home or telephone) with the participant's physician or other licensed health professionals from outside the facility;
- (5) physician orders;
- (6) medication administration records;
- (7) a written description of any acute changes including any unusual behavior, change in condition, need for help or services, or any incidents or accidents resulting in injury to the participant, and any action taken by the facility in response to the changes, incidents or accidents; and
- (8) how the responsible party or his designated representative can be contacted in case of an emergency.

(e) The program shall refer a participant to the participant's physician or other appropriate licensed health professional immediately if the participant's behavior, change in condition, any incidents or accidents resulting in injury to the participant or need for help or services poses an immediate risk to the health and safety of the participant, other participants, or staff in the program.

(f) Any unusual behavior, change in condition, incident, or accident resulting in injury to the participant, or need for help or services shall be reported by the program staff to the responsible party.

(g) Progress notes in the participant's record shall be updated every 24 hours while in the program.

(h) The participant or the responsible party may choose the days and number of days the participant will participate in the program with the administrator's approval and documented in the participant's record.

(i) The reason for any unscheduled participant absence shall be documented by the program staff on the day it occurs. Program staff shall contact or attempt to contact the absent participant or the responsible party and document this contact in the participant's record.

(j) The program is responsible for the participant while the participant is enrolled. A participant leaving the program for part of a day shall sign out, relieving the staff of further responsibility. If a participant has an emotional or mental impairment that requires supervision or is adjudicated incompetent, and that person needs or wants to leave the program during the day, the responsible party or individuals designated by the responsible party shall sign the participant out.

(k) The participant's responsible party or his designated representative shall be contacted and informed of the need to remove the participant from the program if one or more of the following conditions exists:

- (1) the participant's condition is such that he is a danger to himself, or poses a direct threat to the health of others, as documented by a physician; or
- (2) the safety of individuals in the facility is threatened by the behavior of the participant, as documented by the facility.

Documentation of the emergency discharge shall be retained on file in the facility.

(l) After the participant has left the program or died, the program shall maintain the participant's record in the facility for at least one year, and then stored for at least two more years.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0701 is proposed for adoption as follows:

#### **SECTION .0700 – MEDICATION ADMINISTRATION**

##### **10A NCAC 13E .0701 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES**

There shall be written policies and procedures developed and implemented regarding:

- (1) medication administration;
- (2) documentation of medication administration;
- (3) maintenance of documentation;
- (4) documentation and reporting of medication errors; and
- (5) medication storage and disposition.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*



10A NCAC 13E .0702 is proposed for adoption as follows:

**10A NCAC 13E .0702 MEDICATION ADMINISTRATION COMPETENCY EVALUATION**

(a) Validation of each staff person's competency to administer medications shall be completed prior to administering medications and shall include:

- (1) documentation by a registered nurse pursuant to G.S. 90 Article 9A or a licensed pharmacist pursuant to G.S. 90 Article 4A, of a clinical skills validation on the Medication Administration Skills Validation Form, which is incorporated herein by reference, including all subsequent amendments and editions. Copies of this form may be accessed electronically free of charge at <https://www.ncdhhs.gov/dhsr/acls/acforms.html#medtest>;
- (2) successful completion of a standardized written exam established by the Division of Health Service Regulation; or
- (3) listed as a medication aide on the NC Medication Aide Registry pursuant to G.S. 131E-270 and 10A NCAC 130 .0201 incorporated herein by reference including subsequent amendments and editions.

(b) The program shall ensure a licensed health professional who is authorized to dispense, prescribe, or administer medications is available for consultation with staff if needed and any contact shall be documented in the participant's record.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0703 is proposed for adoption as follows:

**10A NCAC 13E .0703 MEDICATION ADMINISTRATION**

(a) Medications shall be administered according to current physician's orders and the participant's medication schedule. The medication schedule shall list all medications with dosages and times medications are to be administered.

(b) A record of all medications given to each participant shall be updated as needed and shall document the following:

- (1) the participant's name;
- (2) the name, dosage, quantity, and route of the medication;
- (3) instructions for giving medication;
- (4) the date and time medication is administered; and
- (5) the name or initials of person giving the medication. If initials are used, a signature for those initials shall be documented and maintained on this record.

(c) Medications shall be kept in the original pharmacy containers in which they were dispensed. The containers shall be labeled with the participant's full name, the name and strength of the medicine, and dosage and instructions for administration. Medicines shall be kept in a locked location.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0801 is proposed for adoption as follows:

### **SECTION .0800 - NUTRITION AND FOOD SERVICE**

#### **10A NCAC 13E .0801 FOOD PROCUREMENT AND SAFETY**

(a) The kitchen, dining, and food storage areas shall be clean and protected from contamination.

(b) All food and beverage shall be procured, stored, prepared, or served by the facility under sanitary conditions in accordance with Rules Governing the Sanitation of Residential Care Facilities (15A NCAC 18A .1600) as promulgated by the North Carolina Division of Public Health, Environmental Health Services Section, which are incorporated herein by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost or can be accessed electronically free of charge at <http://ehs.ncpublichealth.com/rules.htm>.

(c) All meat served to participants shall have been processed at a United States Department of Agriculture (USDA) approved processing plant.

(d) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food on site, as indicated on the menus prepared as set forth in Rule .0802 of this Section, for both regular and therapeutic diets.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0802 is proposed for adoption as follows:

#### **10A NCAC 13E .0802 FOOD PREPARATION AND SERVICE**

(a) Staff, space, and equipment shall be provided for safe and sanitary food storage, preparation, and service.

(b) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate, and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the participant.

(c) If participants require assistance with eating, food shall be maintained at serving temperature until assistance is provided.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0803 is proposed for adoption as follows:

**10A NCAC 13E .0803 MENUS**

(a) Menus shall be prepared according to the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) Dietary Guidelines for Americans which is incorporated by reference with all subsequent amendments and editions and is available at no cost at <http://www.health.gov/dietaryguidelines>.

(b) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.

(c) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to participants.

(d) Menus shall be planned to take into account the food preferences and customs of the participants.

(e) A licensed dietitian/nutritionist pursuant to G.S. 90, Article 25 shall plan or review all menus, including all therapeutic diets. The facility shall maintain verification of the licensed dietitian/nutritionist's approval of the therapeutic diets including an original signature by the licensed dietitian/nutritionist and the licensure number of the licensed dietitian/nutritionist.

(f) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets, for guidance of food service staff.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0804 is proposed for adoption as follows:

**10A NCAC 13E .0804 FOOD REQUIREMENTS**

(a) A minimum of three meals a day shall be served.

(b) Foods and beverages that are appropriate to overnight respite participants' diets shall be offered or made available to overnight respite participants as snacks between each meal for a total of three snacks per day and shall be shown on the menu as snacks.

*History Note:* Authority G.S. 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0805 is proposed for adoption as follows:

**10A NCAC 13E .0805 THERAPEUTIC DIETS**

- (a) All therapeutic diet orders, including thickened liquids, shall be in writing from the participant's physician.
- (b) Where applicable, the therapeutic diet order shall be specific to calorie, gram, or consistency, such as for calorie-controlled American Diabetic Association diets, low sodium diets, or thickened liquids, unless there are written orders that include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a licensed dietitian or nutritionist.
- (c) The facility shall maintain an accurate and current listing of overnight respite participants with physician-ordered therapeutic diets for guidance of food service staff.

*History Note:* Authority G.S. 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0806 is proposed for adoption as follows:

**10A NCAC 13E .0806 ASSISTANCE WITH EATING**

- (a) Staff shall provide assistance with eating as needed.
- (b) Food shall be maintained at serving temperature until assistance with eating is provided.
- (c) Participants needing assistance with eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each participant's dignity.

*History Note:* Authority G.S. 131D-6.1;  
Eff. April 1, 2017.

10A NCAC 13E .0807 is proposed for adoption as follows:

**10A NCAC 13E .0807 ACCOMMODATION OF PARTICIPANT NEEDS AND PREFERENCES**

Variations from the required three meals to meet individualized needs or preferences of participants shall be documented in the participant's record.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*

10A NCAC 13E .0901 is proposed for adoption as follows:

**SECTION .0900 - PROGRAM ACTIVITIES**

**10A NCAC 13E .0901 ACTIVITIES PROGRAM**

(a) There shall be a program of activities designed to promote the participants' active involvement with each other, their families, and the community.

(b) If there is a question about a participant's ability to participate in an activity, the participant, the participant's physician, family, or responsible party shall be consulted to obtain a statement regarding the participant's capabilities.

*History Note: Authority G.S. 131D-6.1;  
Eff. April 1, 2017.*