

Fiscal Impact Analysis of Permanent Rule Amendment without Substantial Economic Impact

Agency:	North Carolina Medical Care Commission Division of Health Service Regulation Acute Care Licensure and Certification Section	
Rule Citation(s):	10A NCAC 13L .0301 Written Policies and Procedures 10A NCAC 13L .0302 Personnel Records (see rule text in Appendix A)	
Agency Contact:	Nadine Pfeiffer, DHSR Rules Review Manager – 919-855-3811 Azzie Conley, Section Chief, Acute and Home Care Licensure & Certification – 919-855-4646 Greta Hill, Assistant Section Chief, Acute and Home Care Licensure & Certification – 919-855-4635	
Rulemaking Authority:	G.S. 131E-154.4	
Impact Summary:	State Government:	No Impact
	Local Government:	No Impact
	Private Entities:	Yes
	Substantial Impact:	No Impact

Introduction and Purpose

In response to a Petition for Rulemaking regarding North Carolina Nursing Pool agencies and pursuant to N.C. General Statute 150B-20(c), N.C. General Statute section 131E-154.1 to 154.8 the Department of Health and Human Services proposes to amend existing rules set forth at 10A NCAC 13L Rules Governing the Licensure of Nursing Pools.

This fiscal analysis addresses two rules proposed for amendment. The rule amendments require a retention period for records and require a policy for annually assessing the performance of nursing personnel assigned to health care facilities. In addition, technical and formatting revisions have been made and rule language has been amended to be consistent with updated terminology.

Currently, there are 436 Nursing Pool agencies that are licensed to provide nursing personnel to North Carolina facilities. A Nursing Pool is any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment for nursing personnel in health care facilities. It should be noted that many of these Nursing Pool agencies are headquartered outside of North Carolina but provide personnel to North Carolina healthcare facilities. All of these agencies are privately owned. Nursing personnel includes nurses, nursing assistants, nurse aides, and orderlies. Nursing personnel shortages exacerbated during the COVID-19 pandemic resulted in health care facilities relying on Nursing Pools to provide staff for the care of patients and residents. The increase in the use of nursing pools resulted in a rise in the percentage of nursing care being provided by nursing personnel from nursing pools and caused health care facilities to prioritize improvements to regulation of Nursing

Pool agencies. There are numerous states currently engaged in the process of enhancing regulation of nursing pool agencies including Connecticut, Iowa, Illinois, Louisiana, Oregon, Ohio, and Pennsylvania.

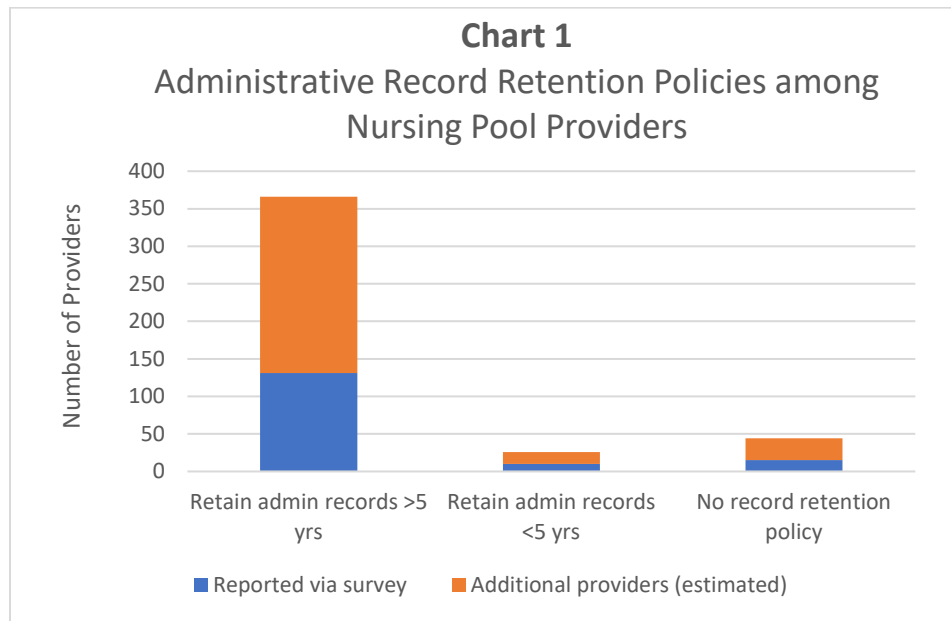
Description of Proposed Rules and Anticipated Fiscal Impact

Rule 10A NCAC 13L .0301- Written Policies and Procedures

The agency is proposing to amend this rule with substantive changes. This rule establishes the criteria for written policies and procedures. The agency is amending the rule to require the nursing pool to retain administrative records for a period of five years. The change will list the type of administrative documents the nursing pool must keep and how long they must keep them.

In September 2022, DHR surveyed 436 Nursing Pool providers to inquire about their retention period policy for administrative documents. 156 Nursing Pool providers responded to the survey (about 36% of total providers). Of those, 141 (about 90% of respondents) reported they already have an established retention period for administrative documents that is written in the contract, policies and procedures, or both.

The vast majority of providers with an existing retention policy reported having a retention period of five to ten years. Only 10 providers (about 6% of survey respondents) reported having a retention period of less than the proposed five years. 15 providers (about 10% of survey respondents) reported that they did not have any established retention period. In the absence of survey responses from all 436 Nursing Pool providers, we assumed that the relative proportions of responding providers with and without retention policies was representative of the total population of providers. Using this assumption, we estimated that about 366 of the 436 licensed NC providers will already be compliant with the proposed retention requirement, 26 will need to increase their existing requirement to meet or exceed five years, and 44 will need to adopt a new retention policy.



A review of other states' regulations for nursing pools revealed no retention period requirement at all (as of September 2022).

For the majority of Nursing Pool providers licensed in North Carolina, adding the proposed requirement for a five-year retention period should have no additional impact on their existing record keeping practice. For the relatively small proportion of Nursing Pool providers that currently have either no retention period or a retention period of less than five years, they will be required to revise their policies and procedures to comply. There should be no fiscal impact to these providers other than a minimal one-time expenditure of time to revise their contract and policies/ procedures documentation and establish an internal process for keeping these records.

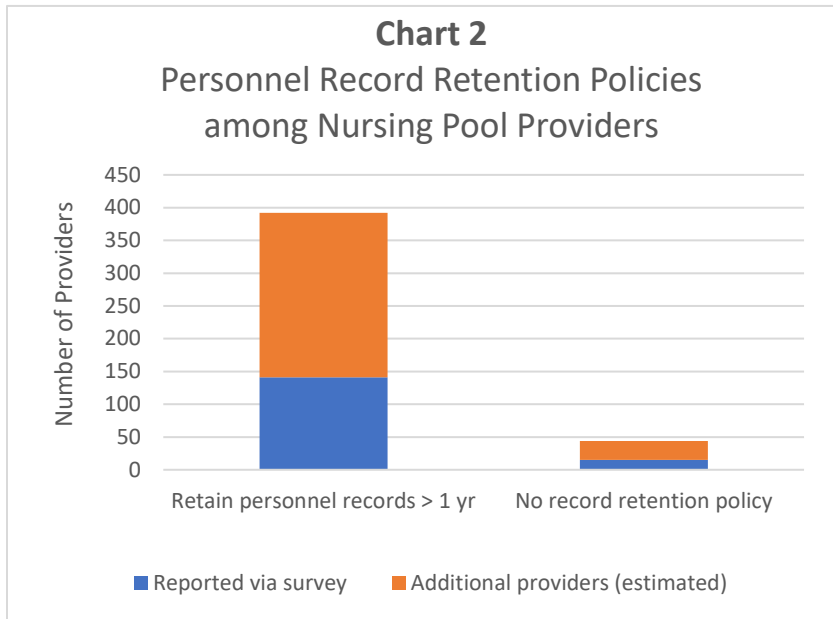
Rule 10A NCAC 13L .0302 - Personnel Records

The agency is proposing to amend this rule with substantive changes. This rule establishes the criteria for Nursing Pool personnel records and the content of personnel records. The current rule requires a completed job application and an annual performance evaluation for each individual employee. The agency is updating the rule to clarify the identification data to be included on the job application. This change will ensure the nursing pool gathers consistent data on all applicants. This change will not result in any impacts to Nursing Pool providers as this is already standard practice.

In addition, the agency is proposing a new requirement that will make it mandatory that the annual performance evaluation include feedback from the health care facility for assigned nursing personnel. This change should enable the Nursing Pool providers to better assess the satisfaction of the health care facility with each assigned nursing personnel's services, and competencies. Nursing Pool nursing personnel are evaluated after every assignment in the general areas of adaptability, communication, dependability, punctuality, documentation, overall clinical skills and job performance. Nursing Pool agencies obtain feedback from Clinical Site Managers via various methods such as periodic phone calls, emails, site visits, and customer surveys. The method used to collect feedback is determined by agency policy. Adding this requirement would improve the quality of nursing care, improve patient/customer experience, and help Nursing Pools address issues as they arise and prevent future issues that could lead to poor and unsafe care for patients.

Lastly, the agency is amending the rule to require the nursing pool to retain personnel records for a period of one year after termination. The change will establish a minimum for how long the nursing pool must keep employee files after termination. The U.S Equal Employment Opportunity Commission (EEOC) requires employers to retain personnel records for one year from the date of termination. Guidelines may vary from state to state but they complement and mirror federal requirements.

According to the 2022 survey by DHSR, about 90% of the Nursing Pool providers who responded indicated they already have a policy to retain personnel records for at least one year. Providers reported personnel record retention periods that varied from one to seven years. About 10% of survey respondents reported having no personnel record retention policy. A review by DHSR of other states' regulations for nursing pools reveals no retention period requirements for personnel records at all.



For the majority of Nursing Pool providers licensed in North Carolina, adding the proposed requirement for a one-year retention period for personnel records should have no additional impact on their existing record keeping practice. For the relatively small proportion of Nursing Pool providers that currently have no retention period for personnel records, they will be required to revise their policies and procedures to comply. There should be no fiscal impact to these providers other than a minimal one-time expenditure of time to revise their contracts and policies/procedures documentation and establish an internal process for keeping these records. The exact cost will vary and depends on the method the Nursing Pool agency chooses to retain files (manual/digital). We can assume the cost of retaining a paper document is more than a digital document.

Summary

The proposed amendments should result in minimal costs to a small number of currently licensed Nursing Pool providers in the form of time spent revising policies and procedures and implementing new internal record retention processes. Ultimately, the goal of the proposed changes is to benefit the patient community by promoting consistency in regulation among Nursing Pool providers and strengthening the existing evaluation processes for nursing personnel employed by these providers. These small, but meaningful, improvements will help to assure quality care, improve patient safety, and provide accountability for Nursing Pool agencies.

Appendix A

10A NCAC 13L .0301 is proposed for amendment as follows:

SECTION .0300 - ADMINISTRATION

10A NCAC 13L .0301 WRITTEN POLICIES AND PROCEDURES

(a) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure.

(b) At the option of the licensee, written policies and procedures may address other services not subject to the Nursing Pool Licensure Act. The Division shall not require separate policies and procedures if the premises from which nursing pool services are offered also offers additional temporary nursing services not subject to licensure.

(c) Policies shall provide that no reprisal action shall be taken against any employee who reports instances of patient rights violations or patient abuse, ~~neglect~~ neglect, or exploitation to the appropriate governmental authority.

(d) The nursing pool shall retain all administrative records for five years and shall make these records available to the Division upon request. Administrative records shall include:

- (1) documents evidencing control and ownerships, such as corporation or partnership papers;
- (2) policies and procedures governing the operation of the agency;
- (3) minutes of the agency's professional and administrative staff meetings;
- (4) reports of complaints, inspections, reviews, and corrective actions taken related to licensure; and
- (5) contracts and agreements to which the agency is a party.

History Note: Authority G.S. 131E-154.4;

Eff. January 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, ~~2015.~~ 2015.

Amended Eff. April 1, 2024.

10A NCAC 13L .0302 is proposed for amendment as follows:

10A NCAC 13L .0302 PERSONNEL RECORDS

(a) A nursing pool shall maintain a personnel record on each individual.

(b) Each individual's personnel record shall include:

- (1) A legible copy of ~~a current~~ an unexpired license verification to practice nursing as a registered nurse or a licensed practical nurse or ~~a current~~ an unexpired Nurse Aide I or Nurse Aide II ~~Listing Card issued by the North Carolina Board of Nursing.~~ listing verification.
- (2) A completed job application with employment history, training, ~~education and continuing education.~~ education, continuing education, and identification data including name, address, and telephone number.
- (3) Results of reference checks.
- (4) Performance evaluations ~~at least~~ annually. The annual performance evaluation shall include feedback from the health care facility of the on-site performance of contracted nursing personnel.

(c) Personnel records shall be maintained for one year after termination from agency employment.

History Note: Authority G.S. 131E-154.4;

Eff. January 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 20, 2015. 2015;

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