

SECTION .2100 - LICENSURE

10A NCAC 13D .2101 APPLICATION REQUIREMENTS

(a) An application for licensure for a new facility shall be submitted to the Licensure and Certification Section of the Division of Health Service Regulation at least 30 days prior to a license being issued or patients admitted.

(b) The application shall contain the following:

- (1) legal identity of applicant (licensee) and mailing address;
- (2) name or names under which the facility is presented to the public;
- (3) location and mailing address of facility;
- (4) ownership disclosure;
- (5) accreditation data;
- (6) bed complement;
- (7) magnitude and scope of services offered;
- (8) name and current license number of the administrator; and
- (9) name and current license number of the director of nursing.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2102 ISSUANCE OF LICENSE

(a) Only one license shall be issued to each facility. The Department shall issue a license to the licensee of the facility following review of operational policies and procedures and verification of compliance with applicable laws and rules.

(b) Licenses are not transferable.

(c) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding Certificate of Need.

(d) The license shall be posted in a prominent location, accessible to public view, within the licensed premises.

History Note: Authority G.S. 131E-104;

Eff. January 1, 1996.

10A NCAC 13D .2103 LENGTH OF LICENSURE

Licenses shall remain in effect up to 12 months, unless any of the following occurs:

- (1) Department imposes an administrative sanction which specifies license expiration;
- (2) closure;
- (3) change of ownership;
- (4) change of site;
- (5) change in bed complement; or
- (6) failure to comply with Rule .2104 of this Section.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2104 REQUIREMENTS FOR LICENSURE RENEWAL OR CHANGES

(a) The Department shall renew the facility's license at the end of each calendar year, if the following occur:

- (1) The licensee maintains and submits to the Department, at least 30 days prior to the licensure expiration date, statistical data for the State's medical facilities plan and review for certificate of need determination. The Department shall provide forms annually to the facility for this purpose.
- (2) The facility is in conformance with G.S. 131E-102(c).
- (3) The combination facility shall specify on the annual license renewal application with which rules for the adult care home beds it plans to comply for the upcoming calendar year. The rule selection shall be effective for the duration of the renewed licensed year. The facility may choose one of the following:
 - (A) nursing home licensure rules under this Subchapter;
 - (B) adult care home licensure rules under 10A NCAC 13F; or

- (C) a combination of nursing home and adult care home licensure rules. The facility shall identify in writing the specific rule governing compliance with the adult care home rules and shall identify in writing the specific requirements governing compliance with the nursing home rules.

(b) The facility shall notify the Nursing Home Licensure and Certification Section of the Division of Health Service Regulation in writing and make changes in the licensure application at least 30 days prior to the occurrence of the following:

- (1) a change in the name or names under which the facility is presented to the public;
- (2) a change in the legal identity (licensee) which has ownership responsibility and liability (such information shall be submitted by the proposed new owner);
- (3) a change in the licensed bed capacity; or
- (4) a change in the location of the facility.

The Department shall issue a new license following notification and verification of data submitted.

(c) The facility shall notify the Nursing Home Licensure and Certification Section of the Division of Health Service Regulation within one working day following the occurrence of:

- (1) change in administration;
- (2) change in the director of nursing;
- (3) change in facility mailing address or telephone number;
- (4) changes in magnitude or scope of services; or
- (5) emergencies or situations requiring relocation of patients to a temporary location away from the facility.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996;
Amended Eff. September 1, 2006.*

10A NCAC 13D .2105 TEMPORARY CHANGES IN BED CAPACITY

(a) A life care center, having an agreement to care for all residents regardless of level of care needs, may temporarily increase bed capacity by 10 percent or 10 beds, whichever is less, over the licensed bed capacity for a period up to 30 days following notification of and approval by the Department.

(b) A facility other than a life care center shall accept no more patients or residents than the total number for which it is licensed except in an emergency situation approved and confirmed in writing by the Licensure and Certification Section of the Division of Health Service Regulation. Emergency authorizations shall not exceed 30 calendar days and shall not exceed the total licensed bed capacity for the facility.

(c) The Department shall authorize, in writing, a temporary increase in licensed beds in accordance with Paragraphs (a) and (b) of this Rule, if it is determined that:

- (1) the increase is not associated with a capital expenditure; and
- (2) the increase would not jeopardize the health, safety and welfare of the patients.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2106 DENIAL, AMENDMENT, OR REVOCATION OF LICENSE

(a) The Department shall deny any licensure application upon becoming aware that the applicant is not in compliance with G.S. 131E, Article 9 and the rules adopted under that law.

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

(c) The Department shall give the licensee written notice of the amendment to the license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional license;

- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the facility's right to a contested case hearing on the amendment of the license.

(d) The provisional license shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location within the facility, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license.

(e) If a licensee has a provisional license at the time the licensee submits the annual utilization data, the provisional license shall remain in effect unless the Department determines that the licensee can be returned to full licensure status.

(f) The Department may revoke a license whenever:

- (1) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
 - (B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6; and
 - (B) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- (3) The Department finds that there has been any failure to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article that endanger the health, safety or welfare of the patients in the facility.

(g) The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Paragraph (f) of this Rule.

(h) The Department can, in accordance with G.S. 131E-232, petition to have a temporary manager appointed to operate a facility.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2107 SUSPENSION OF ADMISSIONS

(a) The Department may suspend the admission of any new patient to any facility when warranted under the provisions of G.S. 131E-109(c).

(b) The Department shall notify the facility personally or by certified mail of the decision to suspend admissions. Such notice shall include:

- (1) factual allegations;
- (2) citation of statutes and rules alleged to be violated; and
- (3) notice of the facility's right to a contested case hearing on the suspension.

(c) The suspension shall be effective when the notice is served or on the date specified in the notice of suspension, whichever is later. The suspension shall remain effective until the facility demonstrates to the Department that conditions are no longer detrimental to the health and safety of the patients.

(d) The facility shall not admit new patients during the effective period of the suspension.

(e) Patients requiring hospitalization during the period of suspension of admissions shall be readmitted after hospitalization or on return from temporary care to the facility based on the availability of a bed and the ability of the facility to provide necessary care. Upon return from the hospital, the requirements of G.S. 131E-130 shall apply.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2108 PROCEDURE FOR APPEAL

(a) The facility may appeal any decision of the Department to deny, revoke or alter a license or any decision to suspend admissions by making such an appeal in accordance with G.S. 150B and 10A NCAC 01.

(b) A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display full license during the appeal.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2109 INSPECTIONS

(a) The facility shall allow inspection by an authorized representative of the Department at any time.

(b) At the time of inspection, any authorized representative of the Department shall make his or her presence known to the administrator or other person in charge who shall cooperate with the representative and facilitate the inspection.

(c) Inspections of medical records will be carried out in accordance with G.S. 131E-105.

(d) The administrator shall provide and make available to representatives of the Department financial and statistical records required to verify compliance with all rules contained in this Subchapter.

(e) The Department shall mail a written report to the facility within 10 working days from the date of the licensure survey or complaint investigation exit conference. The report shall include statements of any deficiencies or violations cited during the survey or investigation.

(f) The administrator shall prepare a written plan of correction and mail it to the Department within 10 working days following receipt of any statement of deficiencies or violations. The Department shall review and accept or reject the plan of correction, with written notice given to the administrator within 10 working days following receipt of the plan.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996.*

10A NCAC 13D .2110 PUBLIC ACCESS TO DEPARTMENT LICENSURE RECORDS

(a) All Department files pertaining to the licensure of any facility under this Subchapter shall be open for inspection by any member of the public during normal business hours. The Department shall have an opportunity to ensure that none of the information identified in Paragraph (b) of this Rule will be disclosed during the inspection. Except for information identified in Paragraph (b) of this Rule, any member of the public may obtain copies of any information contained in the Department licensure files in accordance with Division of Health Service Regulation Directive 30, Publication

Guidelines, which is incorporated by reference, including subsequent amendments. A copy of the directive may be obtained, without charge, from the Licensure and Certification Section, Division of Health Service Regulation, 2711 Mail Service Center, Raleigh, NC 27699-2711.

(b) Unless disclosure is ordered by a court of competent jurisdiction, the following classes of information shall not be disclosed to members of the public:

- (1) information about the diagnosis, prognosis, treatment, or any other confidential medical information under G.S. 8-53, regarding a named person, unless that person consents in writing to the disclosure;
- (2) the name of any person who provided information concerning a facility licensed under this Subchapter, or registered a complaint about the treatment of a patient unless that person consents to the disclosure;
- (3) information identifying any person as a recipient of public assistance or social services, unless that person consents to the disclosure; and
- (4) any confidential communication between the attorney for the Department and the Department.

(c) When documents in the file contain only confidential information of the types identified in Paragraph (b) of this Rule, then they shall be removed from the file before inspection. If a document contains both information of those types identified in Paragraph (b) of this Rule and non-confidential information, then the Department will provide for inspection a copy of the document from which the confidential information is deleted, in lieu of the original document.

History Note: Authority G.S. 8-53; 108A-80; 131E-104; 131E-124(c); 132-1.1; Eff. January 1, 1996.

10A NCAC 13D .2111 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) The surveyor or complaints investigator shall identify and notify the facility of areas of noncompliance resulting from a survey or investigation which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The facility may submit additional written information which was not available at the time of the visit for evaluation by the surveyor, investigator, or branch head. The surveyor, investigator or branch head shall notify the facility if a decision is made, based on information received, not to recommend a penalty. If the decision is to recommend a penalty, the surveyor or investigator shall complete a negative action proposal and recommend a penalty, by Type (A or B), to the branch head who shall make a decision on type and amount of penalty to be submitted for consideration. The negative action proposal shall then be submitted to the administrative penalty monitor for processing.

(b) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(c) The licensee shall have 10 working days from receipt of the notification to provide the Department any additional written information relating to the proposed administrative penalty. Upon request by the licensee, the Department shall grant the licensee an extension of up to 30 days to submit additional written information relating to the proposed administrative penalty.

(d) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S. 131E-129, the licensee shall be notified of the type and amount of penalty and may accept the recommendation instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee must notify the administrative penalty monitor by certified mail within five working days following receipt of the recommendation. The licensee must include payment of the penalty with the notification. If payment is not received, the recommendation shall be forwarded to the Penalty Review Committee.

(e) The Penalty Review Committee must review a recommended penalty when: it is a Type A violation; is a Type B violation that has been previously cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or is a Type B violation as provided in Paragraph (d) of this Rule which is not accepted by the licensee.

(f) A subcommittee of the Penalty Review Committee consisting of four committee members assigned by the Penalty Review Committee chair shall meet to initially review non-repeat Type B violations. The Penalty Review Committee chair shall appoint the subcommittee chair and shall be an ex-officio member of the Penalty Review Committee subcommittee. The surveyor or investigator recommending the penalty or a branch representative shall attend the meeting when work schedules permit. Providers, complainants, affected parties and any member of the public may also attend the meeting. The administrative penalty monitor shall be responsible for informing parties of these public meetings.

(g) Time shall be allowed during the Penalty Review Committee subcommittee meetings for individual presentations regarding proposed penalties. The total time allowed for presentations regarding each facility, the order in which presenters shall speak and length of presentations shall be determined by the Penalty Review Committee subcommittee chair.

(h) The administrative penalty monitor shall have five working days from the meeting date to notify the facility and involved parties of penalty recommendations made by the Penalty Review Committee subcommittee. These recommendations including the vote of the Penalty Review Committee subcommittee shall be submitted for review by the full Penalty Review Committee at a meeting scheduled for the following month.

(i) The full Penalty Review Committee shall consider Type A violations, repeat Type B violations and non-repeat Type B violations referred by the Penalty Review Committee subcommittee. Providers, complainants, affected parties and any member of the public may attend full Penalty Review Committee meetings. Upon written request of any affected party for reasons of illness or schedule conflict, the Department may grant a delay until the following month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(j) The Penalty Review Committee and Penalty Review Committee subcommittee shall have for review the entire record relating to the penalty recommendation. The Penalty Review Committee and Penalty Review Committee subcommittee shall make recommendations after review of negative action proposals, any supporting evidence, and any additional information submitted by the licensee as described in Paragraph (c) of this Rule that may have a bearing on the proposal such as documentation not available during the investigation or survey, action taken to correct the violation and plans to prevent the violation from recurring.

(k) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of the Penalty Review Committee subcommittee or full Penalty Review Committee meetings.

(l) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. Recommendations for nursing home penalties shall be submitted to the Chief of the Medical Facilities Licensure Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation and notify the licensee by certified mail.

(m) The licensee shall have 60 days from receipt of the notification to pay the penalty as provided by G.S. 131E-129 or must file a petition for contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131E-2.

*History Note: Authority G.S. 131D-34; 131E-104; 143B-165;
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