

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

Agency: North Carolina Medical Care Commission

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Impact:

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

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

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

10A NCAC 13F .0702 Discharge Of Residents

10A NCAC 13F .1307 Special Care Unit Resident Profile And Care Plan

10A NCAC 13G .0504 Competency Evaluation and Validation For Licensed Health Professional Support Tasks

10A NCAC 13G .0705 Discharge Of Residents

10A NCAC 13G .1301 Use Of Physical Restraints And Alternatives

Authorizing Statutes: 131D-2.1; 131D-2.16; 131D-4.5;143B-165

Introduction and Background

The agency is proposing changes to update the Discharge of Residents rule language to be consistent with the existing requirements in N.C. Gen. Stat. 131D-4.8 that were established in 2011, to reformat the rule to be in a more chronological order, and to ensure the requirements are clear and unambiguous. Technical changes were also made to include additional documentation requirements for discharge preparation. The proposed changes will generate minimal costs and/or benefits for adult care homes and family care homes. The proposed changes will have limited fiscal impact on facilities as most changes have no substantial costs associated and some are already required in statute.

The proposed changes will have no impact on the Adult Care Licensure Section. The agency does not anticipate any additional impact on state government or local government (i.e. county Departments of Social Services who monitor and conduct complaint investigations in adult care homes and family care homes) beyond their current job requirements to implement, monitor, or regulate the proposed amendments.

Under the authority of G.S. 150B-21.3A, Periodic review of existing rules. The North Carolina Medical Care Commission and Rule Review Commission approved the Subchapter reports with classifications for the rules under 10A NCAC 13F Licensing of Adult Care Homes of Seven or More Beds and 10 NCAC 13G Licensing of Family Care Homes. The rules were classified in the reports as necessary with substantive public interest. Rules 10A NCAC 13F .0702 and 13G .0705 are being presented for re-adoption with substantive changes. The following rules were identified for re-adoption without substantive changes: 10A NCAC 13F .1307 and 13G .1301. Rule 13G .0504, has been amended for clarity and it doesn't affect the fiscal analysis. This rule was part of the fiscal analysis in the package for the Phase 3 re-adoption rules.

Rules Summary and Anticipated Fiscal Impact

10A NCAC 13F .0702 and 13G .0705 Discharge of Residents: These rules outline facilities’ requirements and procedures for a proper and safe discharge of residents. These rules were modified to update the language and to be consistent with the existing requirements in N.C. Gen. Stat. 131D-4.8. Technical changes were also made to this rule to be consistent with current rule writing styles. Revisions were also made to include additional documentation requirements for discharge preparation.

1. Paragraphs (b), (c), and (g) include language consistent with N.C. Gen. Stat. 131D-4.8. The current statute also identifies “the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident” as an additional individual involved in the discharge process, the language was updated to include this individual, and a definition was also included to provide clarity. The proposed changes also include additional requirements in (g)(2)(A) and (g)(2)(B), as outlined in the statute, requiring the facility to request to convene the adult care home resident discharge team to assist with placement if the discharge location is unknown, as well as the facility requirement to inform the resident and/or their representative of their right to request the Long Term Care Ombudsman to serve as a member of the adult care home resident discharge team. The resident discharge team may be led by county Adult Home Specialists who are employed by the local department social services to monitor adult and family care homes or a staff person from the Local Management Entity/Managed Care Organization (LME/MCO).

Facilities have been required to meet the requirements of 131D-4.8. since 2011; the proposed rule amendments will better align the rule with the existing statute. Updating the rule to align with the statute provides clarity for regulated providers and the public and alleviates facilities of the burden of referencing both the rule and the statute. According to 2022 facility license renewal data, there are 553 adult care homes and 535 family care homes operating in North Carolina. Review of the data provided by the North Carolina Division of Health Service Regulation; Adult Care Licensure Section reveals a substantial amount of discharges completed annually in facilities (Table 1). While facility-initiated discharges are represented in Table 1, it is important to note that this data is inclusive of the total number of discharges reported to the agency annually, which also includes resident-initiated discharges and resident hospitalizations that resulted in a level of care change resulting in the resident not returning to the facility. Therefore, the total number of discharges represented in Table 1 would not need to meet the requirements of the proposed rule.

Table 1. Number of Annual Discharges by Facility Type

Year	Facility Type		Total
	Adult Care Home	Family Care Home	
2019	9,678	662	10,340
2020	9,927	584	10,511
2021	8,402	504	8,906

2022	7,027	481	7,508
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Source: Division of Health Service Regulation Enterprise Licensing Database, Adult Care Home & Family Care Home License Renewal Data

2. The agency proposes that facilities also document any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others and make this information available to potential discharge locations upon request. The agency also proposes the facility document contacts with possible discharge locations and responses and make the documentation available to the resident, or legal representative upon request.

Rationale: The rules as currently written do not require facilities to document information regarding the resident interactions with law enforcement or threatening or violent behaviors which often results in the receiving facility being unaware of this information prior to admission. The intent of this proposed change was to allow the receiving facility to be informed upon request of the resident’s known intervention involving law enforcement. This would enable the receiving facility to make a determination as to whether admission of a resident would cause potential harm or disruption to the current residents, and to plan for how to address behaviors and potential future law enforcement interaction should the facility choose to admit the resident. This information would be documented by staff and would only be available upon request of the receiving facility. This will require facility staff to spend a small amount of time to document resident interactions with law enforcement. This additional time is expected to be minimal and will be performed by existing staff as part of their regular job duties.

These rules as currently written do not require facilities to document their efforts to find another placement during the discharge process. The proposed rule language now includes this documentation and also makes it available upon request to the resident to show the efforts done to find another placement. This requirement displays the effort of facilities actions to find a safe discharge location. This will require facility staff to spend a small amount of time to document their efforts to find another placement for a resident. This additional time is expected to be minimal and will be performed by existing staff as part of their regular job duties.

3. These rules as currently written provide a mailing address for copies of The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form. The proposed language removes the mailing address and provides an updated internet address where the forms can be found at no cost.

Fiscal Impact: There are no additional costs to implement the changes included to align with G.S. 131D-4.8 as facilities have been required to comply since 2011. There will be no additional costs with including the documentation of any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others. This information is already documented as required in section 13F .1212/13G. 1213 Reporting of Incidents and Accidents. Facilities will have minimal impact due to the additional time it will require for existing staff to document potential discharge locations and responses. The impact is expected to be minimal as staff are already documenting reasons for discharge and any additional information as indicated in Paragraph (e).

Appendix

10A NCAC 13F .0702 is proposed for reoption with substantive changes as follows:

10A NCAC 13F .0702 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

- ~~(1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is~~

~~dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~

~~(2) — A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~

~~(3) — Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~

~~(4) — A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~

~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~

~~(1) — notifying staff in the county department of social services responsible for placement services;~~

~~(2) — explaining to the resident and responsible person or legal representative why the discharge is necessary;~~

~~(3) — informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~

~~(4) — offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:~~

~~(A) — a copy of the resident's most current FL-2;~~

~~(B) — a copy of the resident's most current assessment and care plan;~~

~~(C) — a copy of the resident's current physician orders;~~

~~(D) — a list of the resident's current medications;~~

~~(E) — the resident's current medications;~~

~~(F) — a record of the resident's vaccinations and TB screening;~~

~~(5) — providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~

~~(A) — the regional long term care ombudsman; and~~

~~(B) — the protection and advocacy agency established under federal law for persons with disabilities.~~

~~(g) If an appeal hearing is requested:~~

~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~

~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period.~~

~~Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~

~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician documented level of care change for the resident, the discharge requirements in this Rule apply.~~

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:

- (1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
- (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.

(5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or

(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

(e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:

(1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

(A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;

(B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;

(C) written notices of warning of discharge for failure to pay the costs of services and accommodations;
or

(D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and

(2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident" may be the same person as the resident's legal representative or responsible person as identified in the resident's record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

(1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;

(2) informing the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and

(A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and

(B) The facility shall inform the resident and the resident's legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team: and

(3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:

(A) a copy of the resident's most current FL-2;

(B) a copy of the resident's most current assessment and care plan;

(C) a list of referrals to licensed health professionals, including mental health;

(D) a copy of the resident's current physician orders;

(E) a list of the resident's current medications;

(F) the resident's current medications; and

(G) a record of the resident's vaccinations and TB screening;

(4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:

(A) the regional long-term care ombudsman; and

(B) the protection and advocacy agency established under federal law for persons with disabilities;

(5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

(1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and

(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; ~~131D-4.5~~; 131D-21; 143B-165;
Eff. January 1, 1977;*

Readopted Eff. October 31, 1977;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. July 1, ~~2004~~, 2004;

Readopted Eff. October 1, 2023.

10A NCAC 13F .1307 is proposed for readoption without substantive changes as follows:

10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN

In addition to the requirements in Rules ~~13F~~ .0801 and ~~13F~~ .0802 of this Subchapter, the facility shall assure the following:

- (1) Within 30 days of admission to the special care unit and quarterly thereafter, the facility shall develop a written resident profile containing assessment data that describes the resident's behavioral patterns, self-help abilities, level of daily living skills, special management needs, physical abilities and disabilities, and degree of cognitive impairment.
- (2) The resident care plan as required in Rule ~~13F~~ .0802 of this Subchapter shall be developed or revised based on the resident profile and specify programming that involves environmental, social and health care strategies to help the resident attain or maintain the maximum level of functioning possible and compensate for lost abilities.

History Note: Authority G.S. 131D-2.16; 131D-4.5; 131D-4.6; 131D-8; 143B-165;

Temporary Adoption Eff. December 1, 1999;

Eff. July 1, ~~2000~~, 2000;

Readopted Eff. October 1, 2023.

10A NCAC 13G .0504 is proposed for amendment as follows:

10A NCAC 13G .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS

(a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their licensed capacity after a licensed health professional has validated the staff person is competent to perform the task.

(b) The licensed health professional shall evaluate the staff person's knowledge, skills, and abilities that relate to the performance of each personal care task. The licensed health professional shall validate that the staff person has the knowledge, skills, and abilities and can demonstrate the performance of the task(s) prior to the task(s) being performed on a resident.

~~(b)~~ (c) Evaluation and validation of competency shall be performed by the following licensed health professionals in accordance with his or her North Carolina occupational licensing laws:

- (1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;
- (2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19), and (21) of Rule .0903 of this Subchapter;

- (3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform the personal care tasks specified in Subparagraph (a)(8) and (11) of Rule .0903 of this Subchapter. An immunizing pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and
- (4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22) through (a)(27) of Rule .0903 of this Subchapter.

~~(e)~~ (d) If a physician certifies that care can be provided to a resident in a family care home on a temporary basis in accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the physician are competent to perform the task(s) in accordance with Paragraphs ~~(a)~~ (b) and ~~(b)~~ (c) of this Rule. For the purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the care needs of the resident and prevent the resident's relocation from the family care home.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;
 Temporary Adoption Eff. September 1, 2003;
 Eff. July 1, 2004;
 Readopted Eff. October 1, ~~2022~~. 2022;
 Amended Eff. October 1, 2023.*

10A NCAC 13G .0705 is proposed for readoption with substantive changes as follows:

10A NCAC 13G .0705 DISCHARGE OF RESIDENTS

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D 2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) — the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) — reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) — documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) — the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) — written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) — the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

- ~~(1) — The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~
- ~~(2) — A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~
- ~~(3) — Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~
- ~~(4) — A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~

~~(f) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~

- ~~(1) — notifying staff in the county department of social services responsible for placement services;~~
- ~~(2) — explaining to the resident and responsible person or legal representative why the discharge is necessary;~~
- ~~(3) — informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~
- ~~(4) — offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - ~~(A) — a copy of the resident's most current FL-2;~~
 - ~~(B) — a copy of the resident's most current assessment and care plan;~~
 - ~~(C) — a copy of the resident's current physician orders;~~~~

- ~~(D) — a list of the resident's current medications;~~
- ~~(E) — the resident's current medications; and~~
- ~~(F) — a record of the resident's vaccinations and TB screening.~~

~~(5) — providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~

- ~~(A) — the regional long term care ombudsman; and~~
- ~~(B) — the protection and advocacy agency established under federal law for persons with disabilities.~~

~~(g) If an appeal hearing is requested:~~

- ~~(1) — the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~
- ~~(2) — the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.~~

~~(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~

~~(i) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician documented level of care change for the resident, the discharge requirements in this Rule apply.~~

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

(b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:

- (1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
 - (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
 - (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:

 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
 - (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.
 - (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.
- (d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:
- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
 - (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.
- (e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:
- (1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

 - (A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (C) written notices of warning of discharge for failure to pay the costs of services and accommodations;
 - or
 - (D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and
 - (2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, “the individual identified upon admission to receive a discharge notice on behalf of the resident” may be the same person as the resident’s legal representative or responsible person as identified in the resident’s record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

- (1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;
- (2) informing the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and
 - (A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and
 - (B) The facility shall inform the resident and the resident’s legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team; and
- (3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a list of referrals to licensed health professionals, including mental health;
 - (D) a copy of the resident's current physician orders;
 - (E) a list of the resident's current medications;
 - (F) the resident's current medications; and
 - (G) a record of the resident's vaccinations and TB screening;
- (4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:
 - (A) the regional long-term care ombudsman; and
 - (B) the protection and advocacy agency established under federal law for persons with disabilities.
- (5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and

(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165;
Temporary Adoption Eff. January 1, 2000; December 1, 1999;
Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. July 1, ~~2004~~. 2004;
Readopted Eff. October 1, 2023.*

10A NCAC 13G .1301 is proposed for readoption without substantive changes as follows:

SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

(a) A family care home shall assure that a physical restraint, any physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily and ~~which~~ that restricts freedom of movement or normal access to one's body, shall be:

- (1) used only in those circumstances in which the resident has medical symptoms that warrant the use of restraints and not for discipline or convenience purposes;
- (2) used only with a written order from a physician except in emergencies, according to Paragraph (e) of this Rule;
- (3) the least restrictive restraint that would provide safety;
- (4) used only after alternatives that would provide safety to the resident and prevent a potential decline in the resident's functioning have been tried and documented in the resident's record.
- (5) used only after an assessment and care planning process has been completed, except in emergencies, according to Paragraph (d) of this Rule;
- (6) applied correctly according to the manufacturer's instructions and the physician's order; and
- (7) used in conjunction with alternatives in an effort to reduce restraint use.

Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and providing supportive devices such as wedge cushions.

(b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

(c) In addition to the requirements in Rule ~~43F~~ .0801, .0802 and .0903 of this Subchapter regarding assessments and care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph (a)(5) of this Rule shall meet the following requirements:

- (1) The assessment and care planning shall be implemented through a team process with the team consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the resident's responsible person or legal representative. If the resident or resident's responsible person or legal representative is unable to participate, there shall be documentation in the resident's record that they were notified and declined the invitation or were unable to attend.
- (2) The assessment shall include consideration of the following:
 - (A) medical symptoms that warrant the use of a restraint;
 - (B) how the medical symptoms affect the resident;
 - (C) when the medical symptoms were first observed;
 - (D) how often the symptoms occur;
 - (E) alternatives that have been provided and the resident's response; and
 - (F) the least restrictive type of physical restraint that would provide safety.
- (3) The care plan shall include the following:
 - (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to reduce restraint time once the resident is restrained;
 - (B) the type of restraint to be used; and
 - (C) care to be provided to the resident during the time the resident is restrained.

(d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

- (1) The order shall indicate:
 - (A) the medical need for the restraint;
 - (B) the type of restraint to be used;
 - (C) the period of time the restraint is to be used; and

- (D) the time intervals the restraint is to be checked and released, but no longer than every 30 minutes for checks and two hours for releases.
 - (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify the resident's physician of the order within seven days.
 - (3) The restraint order shall be updated by the resident's physician at least every three months following the initial order.
 - (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign the existing order.
 - (5) In emergency situations, the administrator or administrator-in-charge shall make the determination relative to the need for a restraint and its type and duration of use until a physician is contacted. Contact with a physician shall be made within 24 hours and documented in the resident's record.
 - (6) The restraint order shall be kept in the resident's record.
- (e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's record and include the following:
- (1) restraint alternatives that were provided and the resident's response;
 - (2) type of restraint that was used;
 - (3) medical symptoms warranting restraint use;
 - (4) the time the restraint was applied and the duration of restraint use;
 - (5) care that was provided to the resident during restraint use; and
 - (6) behavior of the resident during restraint use.
- (f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this Subchapter and been validated on restraint use according to Rule .0504 of this Subchapter.

*History Note: Authority G.S. 131D-2.16; 143B-165;
Temporary Adoption Eff. July 1, 2004;
Temporary Adoption Expired March 12, 2005;
Eff. June 1, ~~2005~~, 2005;
Readopted Eff. October 1, 2023.*