11 NCAC 11H .0111 INSOLVENCY OR HAZARDOUS FINANCIAL CONDITION

(a) A negative fund balance is a financial position of a provider or facility in which the assets of a provider or facility do not exceed its liabilities, as required under generally accepted accounting principles. The Commissioner may deem a provider or facility that has a negative fund balance to be insolvent or in imminent danger of becoming insolvent if any of the following hazardous financial condition standards or factors are applicable or present:

(1) There are findings or conditions reported in the provider's or facility's financial statements that the Commissioner determines to be adverse to the financial stability of the provider or facility.

(2) The current or projected ratios of total assets, including required reserve levels, to total liabilities indicate an impairment or a deterioration of the provider's or facility's operations or equity; or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or facility's operations, working capital, or equity.

(3) The current or projected ratios of current assets to current liabilities indicate an impairment or a deterioration of the provider's or facility's operations, working capital, or equity; or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or facility's operations, working capital, or equity.

(4) The provider or facility is unable to perform normal daily activities and meet its obligations as they become due, considering the provider's or facility's current or projected cash flow and liquidity position.

(5) The provider's or facility's operating losses for the past year or projected operating losses are of such magnitude as to jeopardize normal daily activities or continued provider or facility operations.

(6) The insolvency of an affiliated provider or facility or other affiliated person results in legal liability of the provider or facility for payments and expenses of such magnitude as to jeopardize the provider's or facility's ability to meet its obligations as they become due, without substantial disposition of assets outside the ordinary course of business, any restructuring of debt, or externally forced revisions of its operations.

(7) The provider or facility has receivables that are more than 90 days old.

(8) The insolvency is not temporary and the provider or facility cannot demonstrate that the insolvency is materially reduced or eliminated.

(9) There is an adverse effect on the provider or facility of reporting entrance fees as deferred revenues, with consideration given to all reporting requirements required under generally accepted accounting principles and the ultimate net income component of those revenues.

(10) A start-up provider or facility or any operational provider or facility undergoing plant expansion or refinancing of its debt has a financial condition as a result of such action that could otherwise seriously jeopardize present or future operations.

(b) The provider or facility shall prepare a plan to address and correct any condition that has led to a determination of insolvency or imminent danger of insolvency by the Commissioner. The plan must be presented to the Commissioner within 90 days after the date of the insolvency determination. If the plan to correct the condition is disapproved by the Commissioner, the plan does not correct the condition leading to the Commissioner's determination of insolvency, or the provider's or facility's hazardous condition is such that it cannot be significantly corrected or eliminated, the Commissioner may then proceed under G.S. 58-64-10 or G.S. 58-64-45.

History Note: *Authority G.S. 58-2-40; 58-64-10; 58-64-45; 58-64-65;*
Eff. January 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.