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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

ADMINISTRATIVE ORDER

FINAL DECISION LETTERS

PROPOSED RULES

Human Resources

N.C. Board of Nursing

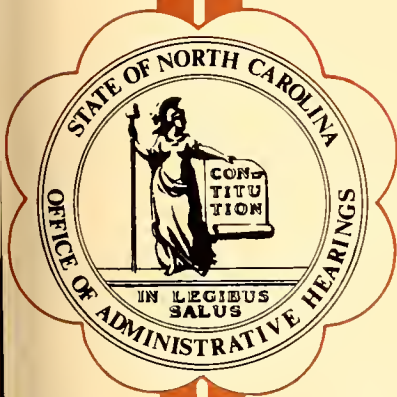
NRCD

State Personnel

LIST OF RULES AFFECTED

ISSUE DATE: JANUARY 16, 1989

Volume 3 • Issue 20 • Pages 873-988



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter sized, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for one page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1980** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1980.

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NORTH CAROLINA REGISTER



*Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, NC 27604
(919) 733 - 2678*

Robert A. Melott,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Masich,
Director APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(January 1989 - May 1990)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89
04/03/89	03/10/89	03/17/89	05/03/89	08/01/89
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07/03/89	06/12/89	06/19/89	08/01/89	11/01/89
07/14/89	06/22/89	06/29/89	08/13/89	11/01/89
08/01/89	07/11/89	07/18/89	08/31/89	12/01/89
08/15/89	07/25/89	08/01/89	09/14/89	12/01/89
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11/15/89	10/24/89	10/31/89	12/15/89	03/01/90
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02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

ORDER

Under the provisions of G.S. 150B-63(d1) it is hereby ordered that the memorandum to all agency heads and Administrative Procedures Act coordinators entitled "Possibly Invalid Rules" and dated January 6, 1989, be published in the North Carolina *Register*.

This the 6th day of January, 1989.

s/Robert A. Melott

Chief Administrative Law Judge
Director.

MEMORANDUM

TO: Agency Heads and APA Coordinators

FROM: Robert A. Melott
Director, Office of Administrative Hearings

RE: Possibly Invalid Rules

I. Background

G.S. 150B-59(c) reads in part:

"Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until July 15, 1988. *These rules* are repealed effective July 16, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a)....[The statute then provides for extension of the repeal date for certain agencies.] Review of *these rules* shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be *revised or repealed* by the agency without a rulemaking hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules the Commission shall notify the agency and file the rules with the Office of Administrative Hearings...." [Emphasis added.]

G.S. 150B-12(h) reads in pertinent part:

"No rule making hearing is required to *amend or repeal* a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c)." [Emphasis added.]

Certain rules filed by the Administrative Rules Review Commission in accordance with G.S. 150B-59(c) during the last week of December brought to my attention for the first time deviations from the provisions of the statutes quoted that may invalidate the rules recently filed and others filed and codified in the past.

This problem does not affect rules in effect on September 1, 1986, and not amended after that date. It affects new rules that became effective after September 1, 1986, and possibly rules that existed on that date that were amended after that date.

It is my opinion that the statutes quoted clearly do not give authority for an agency to adopt a new rule without public hearing, and that any such adoption is invalid.

This proposition seems clear in that G.S. 150B-59(c) does not give authority to ARRC to review rules *not* in effect on September 1, 1986, as part of its review of existing rules and neither G.S. 150B-59(c) nor G.S. 150B-12(h) provides for *adoption* without public hearing.

It is my further opinion that serious questions can be raised as to the validity of amendment or repeal of rules without public hearing, relying on G.S. 150B-59(c) and G.S. 150B-12(h), if the rule existed on September 1, 1986, but was amended thereafter.

This proposition is less clear. While the exception as to amendments and repeals without public hearing is explicit, an argument can be made that ARRC has no need or authority to review under G.S. 150B-59(c) a rule that is has already reviewed under G.S. 143B-30.2. Any rule in existence on

September 1, 1986, but amended thereafter, has been subject to review when the amendment was approved by ARRC. "The filing on an amendment to a rule places the entire rule before the Commission for its review." G.S. 143B-30.2(h). Whether the review of a rule during consideration of the amendment takes that rule out of the coverage of G.S. 150B-59(c) and therefore invalidates even amendments or repeals effectuated without public hearing may be of concern to the promulgating agency.

In addition to the foregoing, I have received information, which as yet I have not had time to substantiate, that in some instances agencies or the ARRC staff or both have, by reusing numbers, included what are in fact new rules in what were represented to be amendments to existing rules and thereby circumvented the requirement for public hearing. It is possible that some such items have been codified. An audit of all filings relying on G.S. 150B-59(c) is being conducted to determine whether this has in fact occurred and if so what rules are involved.

II. OAH Action

1. In regard to filings that have not been accepted and codified (i.e., any approvals by ARRC at its December, 1988, meeting and thereafter):
 - a. Any filing that constitutes an adoption, that is, a "completely new rule with a new rule number," 26 NCAC 2A .0201, that has not been the subject of notice in the *North Carolina Register*, public hearing, and all other requirements of Article 2 of Chapter 150B will not be accepted.
 - b. Any filing that is an amendment or repeal of a rule that was in effect on September 1, 1986, but amended thereafter, where such filing claims the exemption from public hearing given by G.S. 150B-12(h) and G.S. 150B-59(c), will be accepted. The original filing will be placed in the permanent file with a notice, and such notice will be added to the history note, as follows:

"(This rule) (This repeal) in whole or in part may be invalid due to the failure of the adopting agency to comply with Article 2 of Chapter 150B. The adopting agency has relied on the exemption to the public hearing requirement contained in G.S. 150B-12(h) and G.S. 150B-59(c). It is the opinion of the Director of the Office of Administrative Hearings that those provisions do not apply to all or part of this rule. The adopting agency asserts the validity of (the rule) (the repeal) despite that opinion."

2. All items already codified relying on the exemptions are being reviewed as time and staff availability permit. Any new rule, amendment or repeal that is found that comes within any of the problem areas discussed herein will have the above notice added to the permanent file and the history note.
3. In connection with 1 and 2, you should be aware, if you are not already, that G.S. 150B-59(6) makes my acceptance of a rule for filing *prima facie* evidence that the filing is proper. The primary purpose of the notice discussed herein is to make public knowledge, by the best means available to me, the fact that presumption of validity may be rebuttable as to the rules in question.

III. Recommended Agency Action

1. I strongly urge you to consult your legal counsel regarding the contents of this memorandum.
2. If a decision is made that action should be taken to ensure the validity of any rule, I suggest that rulemaking that conforms to the requirements of Article 2 of Chapter 150B should be commenced. Agencies should also consider the possible use of temporary rulemaking as an interim measure where appropriate.

3. Agency heads, agency counsel, and particularly APA Coordinators should, if necessary, familiarize themselves with the provisions of Chapters 143B and 150B regarding the authority and responsibility of the ARRC and OAH respectively.

ARRC is mandated to review the *content* of certain existing and all rules or proposed rules in relation to statutory authority, clarity and need. G.S. 143B-30.2(a) and G.S. 150B-59(c).

OAH is mandated to assist agencies in drafting rules, G.S. 150B-60(c), and to oversee the filings procedures and format of adopted rules, including publication of proposed rules in the *North Carolina Register*, G.S. 150B-59(a) and (b), G.S. 150B-61 and G.S. 150B-63.

I strongly urge you to determine, when you have a question or problem concerning administrative rules, to determine whether that question falls within the ambit of ARRC or OAH and then to obtain a response from the agency that has the responsibility and authority to deal with the matter.

cf: The Honorable John S. Stevens, Chairman
Administrative Rules Review Commission

VOTING RIGHTS ACT FINAL DECISION LETTERS

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JPT:DBM:ST:dvs:svw
DJ 166-012-3
W9600
Y0912

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

December 23, 1988

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the annexation [Ordinance No. 1887 (1988)] and the designation of the annexed area to a single-member district for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on November 4, 1988.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

U.S. Department of Justice
Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

December 29, 1988

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to your request that the Attorney General reconsider the August 1, 1988, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change from at-large to single-member district elections and the districting plan for the board of education in Granville County, North Carolina.

This also refers to the implementation schedule, including the April 11 and May 2, 1989, special elections, for the new election system, submitted to the Attorney General pursuant to Section 5. We received your letter and submission on November 4, 1988.

As indicated in the August 1, 1988 objection letter, the objection was interposed because we could not find any significant differences, in terms of the opportunities presented to minority voters, between the school board plan and the county commission plan, which the United States District Court found to violate Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, in McGhee v. Granville County, No. 87-29-CIV-5 (E.D.N.C. Feb. 5, 1988). In view of the pending appeal of that decision, we noted that if the appeal resulted in a reversal of the McGhee decision, reconsideration and withdrawal of the objection could be warranted.

As your request for reconsideration points out, the United States Court of Appeals for the Fourth Circuit has reversed the district court. McGhee v. Granville County, No. 88-1553 (4th Cir. Oct. 21, 1988). Accordingly, pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section (28 C.F.R. 51.48), the objection interposed to the single-member district election system and districting plan is hereby withdrawn. In addition, the Attorney General does not interpose any objection to the 1989 implementation schedule. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.41.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt and amend rules cited as 10 NCAC 7A .0209, .0211; 8D .0701, .0707; 8G .0904; 10A .2119, .2122, .2123, .2129; 10B .1401 - .1403, .1501 - .1502, .1601 - .1612; 10C .0314; 10F .0001 - .0002, .0032 - .0033, .0042; 10H .0201 - .0205.

The proposed effective date of this action is June 1, 1989.

The public hearing will be conducted at 1:30 p.m. on February 15, 1989 at the Archdale Building, Hearing Room (Ground Floor), 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

**SUBCHAPTER 7A - ACUTE COMMUNICABLE
DISEASE CONTROL**

**SECTION .0200 - CONTROL MEASURES FOR
COMMUNICABLE DISEASES**

.0209 CONTROL MEASURES

(d) The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

(2) The attending physician shall:

(C) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Health Services and shall mail the form to the division; the division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and

potentially exposed persons is satisfied by fulfilling the requirements of (d)(2)(B) and (C);

(3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

(A) If the child is in school and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint an interdisciplinary committee. If the local school system has established establishes such a committee within three days of notification, the local health director shall consult with this committee. If the local health director determines that a significant risk of transmission exists, the local health director shall notify the parents and the committee and shall assist the committee in determining whether an adjustment can be made to the student's school program to eliminate any significant risk of transmission. If the local health director determines that of the requirement for an alternate child care or educational setting, alternative educational setting is necessary, the local health director shall instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel. The local health director shall notify the school principal of the school or institution chosen by the parent or guardian to provide the alternate educational setting. When the local health director determines that a significant risk of transmission exists, the local health director shall consult with the superintendent or private school director to an alternate educational setting is required, the local health director shall determine if school personnel directly involved with the child

need to be notified of the HIV infection in order to prevent transmission. The local health director shall determine which school personnel shall be notified and shall ensure that these persons are instructed regarding the necessity for protecting confidentiality.

- (B) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.
- (4) When health care workers or other persons have had a nonsexual blood or body fluid exposure that poses a significant risk of transmission, the following shall apply:
 - (A) When the source person is known:
 - (i) The attending physician or occupational health care provider responsible for the exposed person shall notify the attending physician of the person whose blood or body fluids is the source of the exposure that an exposure has occurred. If the attending physician of the source person knows the source's HIV infection status, the physician shall transmit this information to the attending physician of the exposed person. If the attending physician of the source person does not know the infection status of the source person, the physician shall discuss the exposure with the source and if the source person is at high risk for HIV infection, shall request permission for testing for HIV infection. If permission is granted, the source shall be tested. If permission is denied, the local health director may order testing of the source if the local health director determines that the exposure poses a significant risk of transmission of HIV and that the source is at high risk for HIV infection. Whether or not the source is tested, the attending physician of the exposed person shall be notified of the risk status of the source and their infection status, if known.
 - (B) When the source person is unknown, the attending physician of the exposed person shall give inform the exposed person of the risk of transmission ~~the control measures listed in (d)(1)(a) through (c),~~ and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.

(13) A person charged with an offense that involves nonconsensual vaginal, anal, or oral intercourse, or that involves vaginal, anal, or oral intercourse with a child 12 years old or less shall be tested for HIV infection if:

- (A) probable cause has been found or an indictment has been issued;
- (B) the victim notifies the local health director and requests information concerning the HIV status of the defendant; and
- (C) the local health director determines that the alleged sexual contact involved in the offense would pose a significant risk of transmission of HIV if the defendant were HIV infected.

If in custody, the person shall be tested by the Department of Corrections and if not in custody, the person shall be tested by the local health department. The Department of Corrections shall inform the local health director of all such test results. The local health director shall inform the victim of the results of the test, counsel the victim appropriately, and instruct the victim regarding the necessity for protecting confidentiality.

Statutory Authority G.S. 130A-144.

.0211 DUTIES OF OTHER PERSONS

(b) The following persons shall require that any person about whom they are notified pursuant to Paragraph (a) comply with control measures given by the local health director to prevent transmission in the facility or establishment:

- (1) the principal of any private or public school;
- (2) employers;
- (3) superintendents or directors of all public or private institutions, hospitals, or jails; and
- (4) operators of a child day care center, child day care home, or other child care providers.

Statutory Authority G.S. 130A-143; 130A-144.

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8D - CHILDREN'S SPECIAL HEALTH SERVICES: DEVELOPMENTAL DISABILITIES BRANCH

SECTION .0700 - ROSTERS

.0701 QUALIFICATIONS

(a) The physician applicant for full rostering status must be a resident of North Carolina, licensed to practice medicine in the state, have

hospital privileges in the community of his/her practice, be board-certified in a specialty with pediatric training in that specialty, and meet the criteria of the American Academy of Pediatrics for that specialty, and board certified in a specialty recognized by the American Medical Association.

(b) Provisional rostering may be considered for a physician who practices in an area where there are no physicians rostered in his/her specialty, if he/she has met all formal academic training criteria required by a specialty board recognized by the American Medical Association. Provisional rostering shall be valid until a specialist in the area becomes rostered in that specialty. There shall be two categories of rostered physicians under Children's Special Health Services:

- (1) A fully rostered physician will have met all the requirements set forth in Paragraph (a) of this Rule. Physicians rostered by the program prior to the date of implementation of this Rule shall be considered fully rostered;
- (2) A physician may be conditionally rostered if there is no fully rostered physician in the same geographic region. A conditionally rostered physician must meet all of the requirements set forth in Paragraph (a) for a fully rostered physician, except for the requirements that a physician be board-certified or meet the criteria of the American Academy of Pediatrics for that specialty. However, the physician must possess pediatric experience in a specialty and provide services necessary for the care of children in that geographic region. The status of the conditionally rostered physician shall be reviewed every three years.

Children's Special Health Services shall have written policies governing the rostering process.

Statutory Authority G.S. 130A-124.

.0707 ADMINISTRATIVE REQUIREMENTS

The applicant for rostering agrees:

- (1) To encourage insurance clerk/office manager to be properly trained regarding Children's Special Health Services and its forms;
- (2) To properly prepare or ensure the completion of forms and paperwork as indicated or needed for services to the family;
- (3) To take responsibility for preparing requests for ancillary services such as drugs and supplies; and
- (4) Not to hold the patient or family responsible for unprocessed or unpaid bills for physician's services which are due to provider

error or non-compliance with program guidelines.

Statutory Authority G.S. 130A-124.

SUBCHAPTER 8G - PERINATAL CARE

SECTION .0900 - CONTRACTS FOR EDUCATION AND TRAINING

.0904 ANNUAL REPORT

(a) The contractor shall submit an annual report to the perinatal program and the regional committee within ~~60~~ 45 days from the close of the contract period. Contents of the report shall meet program guidance with regards to participation and evaluation of educational offerings. The report shall include an evaluation addressing progress in meeting the educational objectives outlined in the application. It shall also include a list of persons participating in the educational activities supported through the contract (including name, title, county and place of work).

Statutory Authority G.S. 130A-127.

CHAPTER 10 - HEALTH SERVICES: ENVIRONMENTAL HEALTH

SUBCHAPTER 10A - SANITATION

SECTION .2100 - RULES GOVERNING THE SANITATION AND SAFETY OF MIGRANT HOUSING

.2119 GRADING

(b) The migrant housing shall be classified as follows:

- (3) As disapproved, if ~~conditions resulting in a provisional classification have not been corrected within~~ upon reinspection after expiration of the specified time period, the demerit score is greater than 20 or any six-demerit point item is found to be violated.

Statutory Authority G.S. 130A-239.

.2122 BUILDINGS

(g) Each room, except toilet rooms and rooms with no exterior walls, in a migrant housing building shall be provided with screened windows the total area of which shall be not less than one-tenth of the floor area of each room, excluding closet space. A window shall be an opening to the outside that can be closed to protect against the elements. Doors that are provided with screens and that can be closed to protect against the elements shall be considered equivalent to screened windows in determining

the total area of screened windows in a migrant housing building. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation. A toilet room shall be provided with a screened window(s) not less than six square feet in area or shall be provided with mechanical ventilation.

Statutory Authority G.S. 130A-239.

.2123 WATER SUPPLY

(d) A functional hot water system shall be provided for laundry, bathing, and food preparation purposes. The hot water system shall be sized to provide a storage capacity plus a recovery to 140 degrees Fahrenheit per hour capacity equal to a total of five gallons per person. Unless otherwise stated on the water heating equipment, recovery shall be based on 4.1 gallons per hour per kilowatt (KW) or, one gallon per hour per 834 British thermal units (BTU).

Statutory Authority G.S. 130A-239.

.2129 KITCHEN AND DINING FACILITIES

(b) A kitchen facilities shall be provided facility with an operable stove, (s) refrigerator, (s) table (s) and sink (s). shall be provided.

(c) All food service facilities, other than those where migrants procure and prepare food for their own consumption, shall comply with the following:

(4) Food Service Persons

~~(B) No person, while infected with a disease in a communicable form, or while a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any capacity in which there is a likelihood of that person's contaminating food or food-contact surfaces with pathogenic organisms. If either the migrant housing operator or crew leader has reason to suspect that any food service person has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the local health department immediately.~~

Statutory Authority G.S. 130A-239.

SUBCHAPTER 10B - SHELLFISH SANITATION

SECTION .1400 - CLASSIFICATION OF SHELLFISH GROWING WATERS

.1401 DEFINITIONS

The following definitions shall apply throughout this Section.

- (1) "Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.
- (2) "Closed - system marina" means a marina constructed in canals, small basins, small tributaries or any other area with restricted tidal flow.
- (3) "Commercial marina" means marinas that offer one or more of the following services: fuel, haul-out facilities, or repair services.
- (4) "Conditionally approved area" means an area subject to predictable intermittent pollution that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (5) "Depuration" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled method.
- (6) "Division" means the Division of Health Services or its authorized agent.
- (7) "Fecal coliform" means bacteria of the coliform group which will produce gas from lactose in a suitable multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5°C plus or minus 0.2°C in a water bath.
- (8) "Growing waters" means waters which support or could support shellfish life.
- (9) "Marina" means any water area with a structure (dock, basin, floating dock, etc.) which is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats.
- (10) "Marine biotoxins" means a poisonous substance accumulated by shellfish feeding upon dinoflagellates containing toxins.
- (11) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (12) "Open - system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (13) "Private marina" means marinas private or residential that are not commercial marinas.
- (14) "Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.
- (15) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.

- (16) "Relaying" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.
- (17) "Restricted area" means an area from which shellfish may be harvested only by permit and subjected to an approved depuration process or relayed to an approved area.
- (18) "Sanitary survey" means the evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (19) "Shellfish" means oysters, mussels, and all varieties of clams.
- (20) "Shoreline survey" means a visual inspection of the environmental factors that affect the sanitary quality of a growing area and identifies sources of pollution when possible.

Statutory Authority G.S. 130A-230.

.1402 CLASSIFICATION OF SHELLFISH GROWING WATERS

(a) All actual and potential shellfish growing areas shall be classified as to their suitability for shellfish harvesting. Growing waters shall be designated with one of the following classifications:

- (1) Approved area,
- (2) Conditionally approved area,
- (3) Restricted area, or
- (4) Prohibited area.

(b) Maps showing the boundaries and classification of growing areas shall be maintained by the division.

Statutory Authority G.S. 130A-230.

.1403 SANITARY SURVEY

(a) Growing waters shall be divided into growing areas by the division.

(b) A sanitary survey shall be conducted for each growing area every three years except growing areas that are totally prohibited, and shall include the following:

- (1) A shoreline survey to evaluate pollution sources that may affect the area.
- (2) A hydrographic survey to evaluate meteorological and hydrographic factors that may affect distribution of pollutants.
- (3) A bacteriological survey to assess water quality. A bacteriological survey shall include the collection of growing area water

samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate point and non-point pollution sources. A minimum of 15 sets of samples shall be collected from growing areas during the three year evaluation period. Areas without a shoreline may be sampled less frequently.

(c) Sanitary survey reports shall be prepared for each growing area every three years.

(d) All sanitary survey reports shall be maintained by the division.

Statutory Authority G.S. 130A-230.

.1404 APPROVED AREAS

An area classified as approved for shellfish harvesting for direct market purposes, must satisfy the following criteria as indicated by a sanitary survey:

- (1) the shoreline survey has indicated that there is no significant point source contamination;
- (2) the area is not contaminated with fecal material, pathogenic microorganisms, poisonous and deleterious substances, or marine biotoxins that consumption of the shellfish might be hazardous;
- (3) the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water shall not exceed 14 per 100 milliliters, and not more than ten percent of the samples shall exceed a fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of areas most probably exposed to fecal contamination during most unfavorable hydrographic conditions.

Statutory Authority G.S. 130A-230.

.1405 CONDITIONALLY APPROVED AREAS

(a) An area may be classified as conditionally approved if the sanitary survey indicates the area will meet approved area classification criteria for a reasonable period of time and the factors determining these periods are known and predictable.

(b) A written management plan shall be developed by the division for conditionally approved areas.

(c) When management plan criteria are met the division may recommend to the Division of Marine Fisheries the area may be opened to shellfish harvesting on a temporary basis.

(d) When management plan criteria are no longer met or public health appears to be jeopardized

ardized, the division will recommend to the Division of Marine Fisheries immediate closure of the area to shellfish harvesting.

Statutory Authority G.S. 130A-230.

.1406 RESTRICTED AREAS

(a) An area may be classified as restricted when a sanitary survey indicates a limited degree of pollution and the area is not contaminated to the extent that indicates that consumption of shellfish could be hazardous after controlled depuration or relaying.

(b) Relaying of shellfish shall be conducted in accordance with 10 NCAC 10B, Rules Governing the Sanitation of Shellfish.

(c) Depuration of shellfish shall be conducted in accordance with 10 NCAC 10B, Rules Governing the Sanitation of Shellfish.

Statutory Authority G.S. 130A-230.

.1407 PROHIBITED AREAS

A growing area shall be classified prohibited if there is no current sanitary survey or if the sanitary survey or other monitoring program data indicate that the area does not meet the criteria as specified in approved, conditionally approved or restricted classifications. The taking of shellfish for any human food purposes from such areas shall be prohibited.

Statutory Authority G.S. 130A-230.

.1408 UNSURVEYED AREAS

Growing areas which have not been subjected to a sanitary survey shall be classified as prohibited.

Statutory Authority G.S. 130A-230.

.1409 BUFFER ZONE

A prohibited area shall be established as a buffer zone around each wastewater treatment plant outfall.

Statutory Authority G.S. 130A-230.

.1410 RECLASSIFICATION

(a) Any upward revision of an area classification shall be supported by a sanitary survey and documented in the sanitary survey report.

(b) A downward revision of an area classification may be made without a sanitary survey.

(c) When growing waters are reclassified, appropriate recommendation shall be made to the Division of Marine Fisheries regarding the open-

ing and closure of the waters for the harvest of shellfish for human consumption.

Statutory Authority G.S. 130A-230.

.1411 MARINAS: DOCKING FACILITIES: OTHER MOORING AREAS

Classification of shellfish growing waters with respect to marinas, docking facilities, and other mooring areas shall be done in accordance with the following:

- (1) All waters within the immediate vicinity of a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. Excluded from this classification are boat ramp facilities and all other docking areas with less than 30 slips, having no boats over 21 feet in length and no boats with heads (bathroom facilities).
- (2) Additional waters beyond the marina may be classified as prohibited to shellfish harvesting. The minimum requirement for the additional prohibited area adjacent to the marina shall be based on the number of slips and the type of marina (open or closed system). The automatic prohibited area shall extend beyond the marina from all boat slips, docks, and docking facilities, according to the following:

Number of Slips in Marina	Size of Prohibited Area (Feet)	
	Open System	Closed System
11 - 25	100	200
26 - 50	150	275
51 - 75	175	325
76 - 100	200	400

Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.

- (3) After the marina is put in use water quality impacts of marina facilities may require a change in classification. In determining if

a change in classification is necessary, marina design, marina usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be considered.

- (4) Areas, other than marinas, where boats are moored or docked shall be considered on a case-by-case basis with respect to sanitary significance relative to actual or potential contamination and classification shall be made as necessary.
- (5) The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close proximity to each other are expected to adversely affect public trust waters. When these situations occur the division will recommend closures exceeding those outlined in Paragraph (2) of this Rule. The following guides will be used in determining close proximity:
 - (a) marina entrance canals within 225 feet of each other;
 - (b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);
 - (c) where closure areas meet or overlap; and
 - (d) open system marinas within 300 feet of a marina entrance canal.

Statutory Authority G.S. 130A-230.

.1412 SHELLFISH MANAGEMENT AREAS

When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.

Statutory Authority G.S. 130A-230.

.1413 PUBLIC HEALTH EMERGENCY

(a) The division shall recommend to the Division of Marine Fisheries immediate closure of shellfish waters to the harvesting of shellfish due to a public health emergency.

(b) The division shall recommend to the Division of Marine Fisheries re-opening shellfish waters when the condition causing the public health emergency no longer exists and shellfish have had sufficient time to purify naturally from possible contamination.

Statutory Authority G.S. 130A-230.

.1414 LABORATORY PROCEDURES

All laboratory examinations for water and shellfish used for the evaluation of growing areas shall be made in accordance with the latest approved edition by the Food and Drug Administration of "Recommended Procedures for Bacterial Examination of Sea Water and Shellfish", American Public Health Association, Inc. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

Statutory Authority G.S. 130A-230.

SUBCHAPTER 10C - VECTOR CONTROL

SECTION .0300 - SANITATION OF BEDDING

.0314 AUTHORIZED SANITIZING PROCESSES

(c) The Steri-Fab spray sterilization system may be used for sanitization if applied in accordance with the manufacturer's directions.

Statutory Authority G.S. 130A-273.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0001 GENERAL

(b) The ~~solid and~~ hazardous waste branch of the Division of Health Services shall administer the hazardous waste management program for the State of North Carolina.

(d) Copies of all material adopted by reference in this Subchapter may be inspected in the ~~Solid and Hazardous Waste~~ branch office, ~~Division of Health Services, 306 N. Wilmington Street, 401 Oberlin Road, P.O. Box 2091, Raleigh, N.C. 27602.~~ Copies may be obtained from the ~~Solid and Hazardous Waste~~ branch at the actual cost to the branch.

Statutory Authority G.S. 130A-294(c).

.0002 DEFINITIONS

(b) This Rule shall apply throughout this Subchapter except that:

(4) Branch shall be the Hazardous Waste Branch in the Solid Waste Management Section.

Statutory Authority G.S. 130A-294(c).

.0032 STANDARDS FOR OWNERS/ OPERATORS OF IIWMF'S - PART 264

(i) "Financial Requirements" contained in 40 CFR 264.140 to 264.151 (Subpart H) have been

adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), and ~~40 CFR 264.147(a), 40 CFR 264.147(b), 40 CFR 264.151(a)(1), Section 15 and 40 CFR 264.151(e), and 40 CFR 264.151(a), (b), (c), (d), (e), (f), (h), (i), and (j)~~ are not adopted by reference.

Statutory Authority G.S. 130A-294(c).

.0033 INTERIM STATUS STANDARDS FOR IIWMF'S - PART 265

(h) "Financial Requirements" contained in 40 CFR 265.140 to 265.151 (Subpart H) have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), ~~40 CFR 265.147(a), and 40 CFR 265.147(b)~~, are not adopted by reference.

Statutory Authority G.S. 130A-294(c).

.0042 LAND DISPOSAL RESTRICTIONS - PART 268 - SUBPART A - GENERAL

(a) The "General" provisions contained in 40 CFR 268.1 to ~~268.7~~ 268.13 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The "Prohibitions on Land Disposal" provisions contained in 40 CFR 268.30 to ~~268.32~~ 268.33 (Subpart C) have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

SUBCHAPTER 10H - INACTIVE HAZARDOUS SUBSTANCES AND WASTE DISPOSAL SITES

SECTION .0200 - PRIORITIZATION SYSTEM

.0201 PRIORITIZATION

(a) The division shall review and evaluate relevant site data for all inactive hazardous substance or waste disposal sites and prioritize those sites using the priority system established in this Section.

(b) Only sites with confirmed contamination shall be placed on the inactive hazardous waste sites priority list. Contamination is confirmed if laboratory analyses show the presence of hazardous substances in groundwater, surface water, air, wastes, or soils at concentrations significantly above background levels. Concentrations are significantly above background if the levels detected are more than:

- (1) ten times a detected level in the background, or

- (2) three times the detection limit when the background level is below the detection limit.

(c) A site shall be prioritized based on conditions present at the time of evaluation. All prior removal actions shall be considered.

(d) A site shall be evaluated and receive a separate score in each of the following categories:

- (1) groundwater migration,
- (2) surface water migration,
- (3) air migration, and
- (4) direct contact.

(e) A total score for the site shall be determined by taking the square root of the sum of the squares of the scores in the four categories in Paragraph (d) and dividing by two. Prioritization shall be based upon the total score.

Statutory Authority G.S. 130A-310.12.

.0202 GROUNDWATER MIGRATION

(a) The potential for groundwater contamination is based upon route characteristics, waste containment, and waste characteristics. The score for groundwater migration shall be determined by multiplying the score determined for route characteristics in Paragraph (b) by the score determined for waste containment in Paragraph (c) then multiplying that result by the score determined for waste characteristics in Paragraph (d) and dividing that result by 13.26.

(b) A score for route characteristics shall be determined by adding the values assigned in Subparagraphs (b)(1) through (b)(4).

- (1) A value shall be assigned for depth to water table using either Table 1 if depth to water table is known or Table 2 if depth to water table is unknown. Depth to water table is measured vertically from the lowest point of the hazardous substances to the highest seasonal level of the water table.

Table 1

Depth	Assigned Value
> 150 feet	0
> 75 to 150 feet	2
> 20 to 75 feet	4
≤ 20 feet	6
Contaminant in groundwater	8

Table 2

Location	Assigned Value
Piedmont and Mountain	4

PROPOSED RULES

Coastal Plain	4
Alluvial Valley	6

physical state, the hazardous substance or waste with the highest value shall be used.

- (2) A value shall be assigned for net precipitation using Table 3. Net precipitation shall be calculated by subtracting the mean annual lake evaporation from the mean annual precipitation.

Table 3

Net Precipitation	Assigned Value
≤ -10 inches	0
> -10 to + 5 inches	1
> + 5 to + 15 inches	2
> + 15 inches	3

- (3) A value shall be assigned for hydraulic conductivity using Table 4 when data for hydraulic conductivity are available, using the table entitled "Permeability of Geologic Materials" that is contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)] when hydraulic conductivity data are unavailable but soil and rock types are known, and using Table 5 when hydraulic conductivity data are unavailable and soil and rock types are unknown.

Table 4

Approximate Range of Hydraulic Conductivity	Assigned Value
≤ 10 ⁻⁷ cm/sec	0
> 10 ⁻⁷ to 10 ⁻⁵ cm/sec	1
> 10 ⁻⁵ to 10 ⁻³ cm/sec	2
> 10 ⁻³ cm/sec	3

Table 5

Location	Assigned Value
Triassic basin	1
Piedmont and Mountain	2
Mountain Alluvial Valley or Coastal Plain	3

- (4) A value shall be assigned for physical state using Table 6. Physical state is the state of hazardous substances at the time of disposal. If the site contains hazardous substances or wastes with more than one

Table 6

Physical State	Assigned Value
Solid, consolidated and stabilized	0
Solid, unconsolidated or unstabilized	1
Solid, powder or fine particles	2
Liquid, sludge or gas	3

(c) A score for containment shall be determined by using the table entitled "Containment Value for Ground Water Route," contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)]. If the site has more than one type of containment, the containment with the highest value shall be used.

(d) A score for waste characteristics shall be determined by adding the values assigned in Subparagraphs (d)(1) and (d)(2). In determining a waste characteristics score, the substance with the highest combined toxicity/persistence and waste quantity values shall be used.

- (1) A value for toxicity and persistence shall be assigned using the section entitled "Toxicity and Persistence" contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)].

- (2) A value for hazardous waste quantity shall be assigned using Table 7 when waste quantity is known, and by assigning a value of five when waste quantity is unknown. Hazardous waste quantity is defined as the amount deposited, not how much would have to be removed to clean up the site. When necessary to convert data to a common unit, conversion shall be as follows: one drum equals seven cubic feet equals 50 gallons equals 500 pounds.

Table 7

Waste Quantity	Assigned Value
None	0
De minimus losses only	1
≤ 10 pounds	2
> 10 pounds to 100 pounds	3
> 100 pounds to 1000	4

pounds	
> 1000 pounds	5
< 10 gallons	3
> 10 gallons to 100 gallons	4
> 100 gallons to 1000 gallons	5
> 1000 gallons	6
< 10 cubic feet	4
> 10 cubic feet to 100 cubic feet	5
> 100 cubic feet to 1000 cubic feet	6
> 1000 cubic feet	7
< 10 drums	5
> 10 drums to 100 drums	6
> 100 drums to 1000 drums	7
> 1000 drums	8

Statutory Authority G.S. 130A-310.12.

.0203 SURFACE WATER MIGRATION

(a) The potential for surface water contamination is based upon route characteristics, waste containment, and waste characteristics. The score for surface water migration is determined by multiplying the score determined for route characteristics in Paragraph (b) by the score determined for waste containment in Paragraph (c) then multiplying that result by the score determined for waste characteristics in Paragraph (d) and dividing that result by 13.26.

(b) A score for route characteristics shall be determined by adding the values in Subparagraphs (b)(1) through (b)(4).

(1) A value shall be assigned for facility slope and intervening terrain using the table entitled "Values for Facility Slope and Intervening Terrain," that is contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)].

(2) A value shall be assigned for one-year 24-hour rainfall using Table 8. The amount of rainfall shall be determined using Figure 1, entitled "24-hour rainfall", in 40 CFR 300, Appendix A, which is hereby adopted by reference in accordance with G.S. 150B-14(c).

Table 8

One-Year 24-hour Rainfall Amount (inches)	Assigned Value
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< 2.5	0
> 2.5 to 3.0	1
> 3.0 to 3.5	2
> 3.5	3

(3) A value shall be assigned for distance to nearest surface water using Table 9. Distance to the nearest surface water shall be determined by measuring the shortest distance from the hazardous substance (not the facility or property boundary) to the nearest downhill body of surface water that is on the course that run-off can be expected to follow.

Table 9

Distance	Assigned Value
> 2 miles	0
> 1 to 2 miles	2
> 1000 feet to 1 mile	4
> 200 feet to 1000 feet	6
< 200 feet or contaminant in surface water or sediment	8

(4) A value for physical state shall be assigned as determined in Rule .0202(b)(4) of this Section.

(c) A score for containment shall be determined by using the table entitled "Containment Values for Surface Water Route," contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)]. If the site has more than one type of containment, the containment with the highest value shall be used.

(d) A score for waste characteristics shall be assigned as determined in Rule .0202(d) of this Section.

Statutory Authority G.S. 130A-310.12.

.0204 AIR MIGRATION

A score for air migration shall be determined by using Section 5.0 entitled "Air Route" contained in 40 CFR 300, Appendix A [which is hereby adopted by reference in accordance with G.S. 150B-14(c)]. However, Section 5.1 entitled "Observed Release" contained in 40 CFR 300, Appendix A, is not adopted by reference. A score for air migration shall be determined by multiplying the score determined for waste characteristics in Section 5.2 of 40 CFR 300, Appendix A, by the score determined for targets in

Section 5.3 of 40 CFR 300, Appendix A, and dividing that result by 7.8.

Statutory Authority G.S. 130A-310.12.

.0205 DIRECT CONTACT

(a) A direct contact score shall be determined by adding the score for residential population determined in Paragraph (b), and the score for nearby population determined in Paragraph (c), and dividing the result by 18.

(b) A score for residential population shall be determined by multiplying the value for toxicity assigned in Subparagraph (b)(1) by the value for targets assigned in Subparagraph (b)(2).

(1) A value for toxicity shall be assigned by multiplying by three the value for toxicity as assigned in Rule .0202(d)(1) of this Section.

(2) A value for residential targets shall be assigned by adding the value for high risk population assigned in Subparagraph (b)(2)(A) and the value for total resident population assigned in Subparagraph (b)(2)(B) and the value for sensitive environment assigned in Subparagraph (b)(2)(C). In order to evaluate residential targets, there must be confirmed contamination within the property boundaries of a residence or school/day-care center, or within the boundaries of a sensitive environment.

(A) A value for high risk population shall be assigned by multiplying the resident children, age six and under, by eight, with a maximum value of 100.

(B) A value for total resident population shall be assigned by multiplying the total resident population by two, with a maximum value of 100.

(C) A value for sensitive environments shall be assigned using Table 10.

Table 10

Sensitive Environment	Assigned Value
Critical habitat for federally designated endangered or threatened species	25
National park	25
Designated federal wilderness area	20
habitat known to be used by federally designated (or proposed) threatened or endangered	

species	
National preserve	20
National or State wildlife refuge	20
Federal land designated for protection of natural ecosystems	20
Administration proposed federal wilderness area	20
Habitat known to be used by State-designated endangered or threatened species	15
Habitat known to be used by species under review as to its federally designated threatened and endangered status	15
State lands designated for wildlife or game management	10

(c) A score for nearby population shall be determined by multiplying the value for likelihood of exposure assigned in Subparagraph (c)(1) by the value for toxicity assigned in Subparagraph (c)(2) and multiplying that result by the value for nearby targets assigned in Subparagraph (c)(3). The nearby population consists of individuals who live or go to school within one mile of an area containing contaminated soils or wastes.

(1) A value for likelihood of exposure shall be assigned by using the area of contamination value assigned in Table 11 and the accessibility/frequency of use value assigned in Table 12 to arrive at the value assigned in Table 13.

Table 11

Total Area of Contamination	Assigned Value
No contamination	0
< 1 acre	25
> 1 acre to 5 acres	50
> 5 acres to 10 acres	75
> 10 acres	100

Table 12

Accessibility/Frequency of Use	Assigned Value
Observed contamination on residential property or on property of a park,	100

- playground, school, or other area designated for use by the public.
- Observed contamination on land with no continuous barrier to entry, a barrier that has been breached; or land where there are clear indications of human activity (i.e., footprints). 75
- Observed contamination on land either protected by a continuous and effective barriers to entry, or monitored by 24-hour surveillance. 50
- Observed contamination on land protected by a continuous and effective barrier to entry and 24-hour surveillance. 25
- Presence of an artificial barrier and a natural barrier that combine to restrict access to hazardous substances by completely surrounding the facility; and a means to control entry, at all times, through gates or other entrances to the facility. 5

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ination

Statutory Authority G.S. 130A-310.12.

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Mental Retardation and Substance Abuse Services intends to adopt, amend, repeal rule(s) cited as 10 NCAC 14G .0101 - .0102, .0201 - .0212, .0301 - .0306; 14H .0101 - .0104, .0201 - .0208, .0301 - .0302, .0401 - .0403; 14I .0101 - .0106, .0201 - .0204, .0301 - .0308, .0401 - .0404; 14J .0101 - .0107, .0201 - .0209, .0301 - .0302, .0401 - .0404; 14K .0219; 15A .0204 - .0228; 18I .0115; 18J .0709, .0712; 18L .0333 - .0334, .0338, .0429, .0432, .0604, .0702 - .0703, .0705 - .0707, .0804 - .0809, .0903 - .0904, .1002, .1004 - .1006, .1102 - .1107, .1203 - .1206, .1302 - .1305, .1402 - .1403; 18Q .0284, .0286, .0521, .0709 - .0715, .0803 - .0804, .0908, .0810, .0812; 18R .0205; 45G .0110.

The proposed effective date of this action is May 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 15, 1989 at Holiday Inn State Capitol, 320 Hillsborough Street, Raleigh, NC 27603.

- (2) A value for toxicity shall be assigned by multiplying by three the value for toxicity as assigned in Rule .0202(d)(1) of this Section.
- (3) A value for nearby targets shall be assigned by multiplying the population within ½ mile of the site by 0.1, and adding the result of multiplying 0.05 by the population between ½ and 1 mile of the site, with a maximum total value of 100.

Table 13

Area of Contamination Value	Accessibility Frequency of Use Value				
	100	75	50	25	5
100	1	1	0.75	0.5	0.25
75	1	0.75	0.5	0.25	0.1
50	0.75	0.5	0.25	0.1	0
25	0.5	0.25	0.1	0	0

Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Jackie Ransdell, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27611, (919) 733-7971 by February 15, 1989. The hearing record will remain open for written comments from January 16, 1989 through February 15, 1989. Written comments must be sent to the above address and must state the rule(s) to which the comments are addressed. Fiscal information on these rules is also available from the same address.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14G - COMMITTEES AND PROCEDURES

SECTION .0100 - PURPOSE: SCOPE: DEFINITIONS

.0101 PURPOSE AND SCOPE

(a) The purpose of the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter is to set forth regulations governing human rights for clients in ~~division~~ state facilities. The state facilities governed by these Rules are the regional psychiatric hospitals, mental retardation centers, alcoholic rehabilitation centers, Wright School, the North Carolina Special Care Center at Wilson, Whitaker School, and any other like state owned and operated institutions, hospitals, centers or schools that may be established under the administration of the division. In addition to these Rules, ~~the~~ each state facility shall follow the North Carolina General Statutes regarding clients' rights which are specified in Article 3 of Chapter 122C.

(b) The division shall submit an annual report to the commission on the implementation of the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter.

Statutory Authority G.S. 122C-51; 131E-67; 143B-17; 143B-147.

.0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 14G, 14H, 14I, and 14J of this Chapter.

(b) As used in the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Basic necessities" means the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (3) "Center" means mental retardation center as specified in G.S. 122-69. "Client

record" means any record made of confidential information.

- (4) ~~"Client" means a person admitted to a facility for care, evaluation, treatment, habilitation or rehabilitation.~~ "Clinically privileged" means authorization by the state facility director for a qualified professional to provide specific treatment/habilitation services to clients, within well-defined limits, based on the professional's education, training, experience, competence and judgment.
- (5) ~~"Client Advocate" means anyone who speaks on behalf of a client including facility and other state employees identified through job descriptions as advocates, and volunteers or any other persons who are identified and recognized as advocates as stated in written descriptions of their duties. As used in these Rules client advocates shall not include persons who have any treatment responsibilities for the client receiving the advocacy services.~~
- (6) (5) "Complaint" means an informal verbal or written expression of dissatisfaction, discontent, or protest by a client concerning a situation within the jurisdiction of the state facility. A complaint would usually but not necessarily precede a grievance.
- (6) "Consent" means concurrence by a client or his/her legally responsible person following receipt of sufficient information by the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his/her legally responsible person was provided with sufficient information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (7) "Dangerous articles or substances" means, but is not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (8) "Defacto Incompetent" means a client who is determined to be incompetent by his/her treatment team but who has not been adjudicated incompetent under Chapter 35 of the General Statutes.
- (9) "Department" means Department of Human Resources as established in Chapter 143B of the General Statutes Executive Organization Act of 1973.

- (10) (8) "Deputy Director" means a member of the management staff of the division of ~~Mental Health, Mental Retardation and Substance Abuse Services~~, with responsibility for the state facilities relative to a specific and programs within their disability area. Such directors may include the Deputy Director of Mental Health, Deputy Director of Mental Retardation, Deputy Director of Substance Abuse, ~~Deputy Director for Operations, and Deputy Director for Medical Services~~, or such deputy's designee.
- (11) (9) "Director of Clinical Services" means Medical Director, Director of Medical Services or such person acting in the position of director of clinical services, or his/her designee.
- (12) "Division" means the ~~Division of Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources~~.
- (13) (10) "Division Director" means the director of the division of ~~Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources~~ or his/her designee.
- (14) (11) "Emergency" in ~~Facilities Other Than Regional Hospitals~~ means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or danger of causing when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, unless there is and rapid intervention by the staff is needed. [See (34) (23) of this Rule for definition of medical emergency].
- (15) "Emergency in Regional Hospitals" means a situation in which a client is in imminent danger of causing injury to self or others or danger of causing substantial property damage or serious disruption of the therapeutic environment to the extent that it would infringe on the rights of other clients unless there is rapid intervention by the staff. [See (34) of this Rule for definition of medical emergency].
- (16) (12) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in (34) (23) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (13) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (17) (14) "Exploitation" means the illegal or improper use of a client or his/her resources for another person's profit, business or advantage. "Exploitation" includes borrowing or taking personal property from a client.
- (18) "Facility" means ~~state owned and operated psychiatric hospitals, state alcoholic rehabilitation centers, Wright School, Whitaker School, North Carolina Special Care Center, mental retardation centers and any other like institutions, hospitals, centers or schools that may be established under the administration of the division~~.
- (19) "Facility Director" means the chief administrative officer or manager of a facility or his/her designee.
- (20) (15) "Grievance" means a formal written complaint by or on behalf of a client concerning a circumstance within the jurisdiction of the state facility thought to be unjust, injurious, or a violation of client's client rights. A grievance would usually but not necessarily follow a complaint.
- (21) "Guardian" means a person appointed by a court of competent jurisdiction for the purpose of performing duties related to the care, custody or control of the client which may include, but is not limited to, consenting for medical-surgical procedures or treatment procedures and handling of business or legal affairs. In the case of a minor, "guardian" means a parent or person standing in loco parentis (excluding the facility).
- (22) "Habilitation" means education, training and/or treatment undertaken to develop the capabilities of the client.
- (23) (16) "Human Rights Advisory Committee" means a committee, ~~or the committee's designee~~, appointed by the secretary, to provide an additional safeguard toward the end of protecting the human and civil rights of clients. act in an advisory capacity regarding the protection of clients' rights.
- (24) "Incompetent Client" is a client who has been adjudicated incompetent under Chapter 35 of the General Statutes and has not been restored to legal capacity according to Chapter 35 of the General Statutes.
- (25) (17) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in

which the client is being treated. The psychiatrist may be in private practice, or be employed by another state ~~or a private inpatient or outpatient facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).~~

(26) (18) "Interpreter services" means specialized communication services provided for the hearing impaired by certified interpreters.

(27) (19) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article ~~6~~ 5, ~~A or H~~ Parts ~~7, 8 or 9~~ 7, 8 or 9 of Chapter 122 ~~C~~ of the General Statutes ~~or under G.S. 122-65.11(e)~~ and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility and/or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.

(20) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.

(28) "Legally Responsible Person" means the person or group with legal authority to consent or refuse treatment or habilitation, or otherwise legally act on behalf of a client. Such person shall be: the client if the client is a competent adult; the parent of a minor client; unless another person or agency has been awarded guardianship; or the guardian of an incompetent client.

(29) (21) "Major physical injury" means damage caused to the body resulting in substantial bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.

(30) "Mechanical Restraint" means limitation of the client's freedom of movement with

the intent of controlling behavior by mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets, or restraining shirts. It does not include therapeutic restraint or enabling devices used for medical conditions or to assist a non-ambulatory client to maintain a normative body position. It also does not include handcuffs used for escorting purposes with forensic clients.

(34) (22) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.

(32) (23) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(33) (24) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.

(34) (25) "Neglect" means the failure to provide care or services necessary to maintain the mental health, physical health and well-being of the client.

(26) "Neuroleptic medication" means a category of psychotropic drugs used to treat schizophrenia and related disorders. Neuroleptics are the only category of psychotropic drugs with long-term side effects of major consequence (e.g., tardive dyskinesia). Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.

(35) "Next of Kin" means that person or persons so designated by the client or his/her guardian or parent upon, or subsequent to, admission for treatment or habilitation at a facility [G.S. 122-36(e)].

(36) (27) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him/her

patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

- (37) "Parent" means the biological or adoptive mother or father of a minor client, or the person standing in loco parentis (excluding the facility), or the legal guardian of a minor client.
- (28) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (38) "Physical Restraint" means limitation of the client's freedom of movement by physically holding or subduing the client.
- (39) "Physician" means a person licensed to practice medicine in North Carolina including a doctor of medicine specializing in the field of psychiatry.
- (29) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, gerichairs or table top chairs to provide support and safety for clients with major physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices.
- (40) (30) "Psychosurgery" means surgical procedures for the intervention in or alteration of a mental, emotional or behavior disorder.
- (41) (31) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, minor tranquilizers and lithium.
- (42) (32) "Qualified professional" means any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to, physicians, psychologists, social workers, registered nurses, qualified mental retardation professionals and qualified alcoholism or drug abuse professionals, as these terms are defined in 10 NCAC 14K .0103, 14K .0120 "Standards for Area Programs and Their Contract Agencies" ("Licensure Rules for Mental

Health, Mental Retardation and Other Developmental Disabilities, and Substance Abuse Facilities," division publication APSM 35-1 40-2). In addition, qualified professionals shall include special education instructors, physical therapists, occupational therapists, speech therapists and any other recognized professional group designated by the state facility director.

- (43) "Record" means written account of client information.
- (33) "Regional alcoholic rehabilitation center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (34) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).
- (35) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (44) (36) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (45) (37) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (46) (38) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (39) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(33) in this Rule.
- (40) "Restraint" means the limitation of one's freedom of movement. In accordance with G.S. 122C-60, restraint includes the following:
 - (A) mechanical restraint which is restraining a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts. This does not include handcuffs used for the purpose of escorting forensic clients;
 - (B) physical restraint which is restraining a client by physically holding or subduing

the client until he/she is calm. This does not refer to the utilization of those protective intervention techniques (PIT), as specified in the "Protective Intervention Course Manual", division publication APSM 80-2, relative to transporting a client to seclusion or isolation time-out or applying mechanical restraints.

- (47) (41) "Seclusion" means isolating a client in a separate locked room ~~or a room from which he/she cannot exit~~ for the purpose of controlling a client's behavior. Seclusion shall not include the following in the forensic unit at Dorothea Dix Hospital: the routine use of locked cells, isolation due to escape attempts, security risks or juvenile court orders requiring the separation of juveniles from adults.
- (42) "State facility director" means the chief administrative officer or manager of a state facility or his/her designee.
- (48) "Secretary" means the Secretary of the Department of Human Resources or his/her designee.
- (49) (43) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (44) "Time-out" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (50) (45) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (51) (46) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.
- (52) (47) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.
- (48) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been clearly assigned to a director, supervisor, administrator, or manager.
- (53) (49) "Voluntary client" means a person ~~willingly~~ admitted to a state facility ~~for evaluation, treatment or habilitation and includes but is not limited to those admitted~~ under the provisions of Article 5,

Parts 2, 3, 4 or 5 of Chapter 122C of the General Statutes. G.S. Chapter 122, Articles 4, 9 or 12A. Also included are minors voluntarily admitted by their parents and persons adjudicated incompetent voluntarily admitted to a facility by their guardians.

Statutory Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 131E-67; 143B-147.

SECTION .0200 - HUMAN RIGHTS ADVISORY COMMITTEES

.0201 PURPOSE OF HUMAN RIGHTS ADVISORY COMMITTEES

A human rights advisory committee shall be established in all facilities at each state facility to provide an additional safeguard for protecting the human, civil, legal and treatment rights of clients who, due to impairments resulting from mental retardation, mental illness or substance abuse, may be less able to articulate and exercise their legal entitlements than those not impaired.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0202 MEMBERSHIP

(a) Members of human rights advisory committees shall be named appointed by the secretary. Committees may recommend new members to the secretary.

(b) Recommendations for committee appointments and the appointment process shall be as follows:

- (1) The state facility director shall maintain a schedule of the terms of appointment for committee members and shall request names of possible appointees from voluntary groups serving the mentally ill, mentally retarded or substance abusers, as appropriate, as well as from the chairperson of the state facility human rights advisory committee six months prior to the expiration of a committee member's term. The state facility director shall submit these nominations, as well as any additional nominations, to the appropriate deputy director in the division five months prior to the expiration of the committee member's term.
- (2) Within two weeks following receipt of the nominations, the deputy director shall submit the committee and voluntary group recommendations for nominations, as well as any other nominations supported by the deputy director, to the division director.

- (3) The division director shall submit the committee and voluntary group recommendations, as well as any other nominations he she supports, to the secretary four months prior to the expiration of the committee member's term of office.
 - (4) The secretary shall contact his/her choices for potential appointees, explain committee member responsibilities and confirm appointments in writing.
 - (5) The secretary shall notify the division director and the committee chairperson of confirmed committee appointments and the term of office for appointees two months prior to the expiration of the committee member's term.
 - (6) The division director shall notify the state facility director of the appointment.
- (b) (c) Appointments shall be made with an effort to consider the geographic distribution, race and sex composition of the human rights advisory committees.
- (e) (d) Members shall represent only one of the organizations or professional groups indicated in (c), (f), (g), (h) and (i) of this Rule during any single term in their capacity as human rights advisory committee members.
- (d) (e) Each regional psychiatric hospital shall have a committee consisting of ten members, none of whom shall be currently employed by the division or attorney general's office.
- (1) All members shall be knowledgeable about mental health mental illness issues as evidenced by interest, experience or education. The membership shall include at least eight persons not employed by the division including former employees of the facility. Appointees shall include two members of a mental health association: one member of the Association for Retarded Citizens; one person who is either a client, former client or family member of a client of a regional hospital; one senior citizen; and one person who is a member of a parents or professional group serving children with special needs. Membership should include one attorney who is not employed by the Attorney General's Office. The special counsel assigned to the hospital by the senior superior court judge of the judicial district may be invited to serve in this capacity. Alternatively, the attorney representative may be drawn from the region served.
 - (2) Appointments shall be made with an effort to consider representation of the needs and characteristics of the state facility clients. The membership shall include one health care worker from the facility and one member at large who may be considered as one of the two division employees or one of the eight non-division employees.
- (3) Seven members shall be appointed at-large.
 - (4) At least two members shall be clients and/or family members of clients.
 - (5) One member shall be a licensed attorney.
- (e) (f) Each regional mental retardation center shall have a committee consisting of ten members, none of whom may shall be currently employed by the division. Names shall be requested from the North Carolina Association for Retarded Citizens and other voluntary groups serving the mentally retarded as well as from the mental health, mental retardation and substance abuse system such as directors of regional mental retardation centers.
- (1) Four of the committee members shall be parents of retarded persons, retarded persons themselves and at least one former resident of a regional mental retardation center. Parents should include both those whose mentally retarded children reside and do not reside in the facility. include the legally responsible person(s) of persons with mental retardation who may or may not reside in a state facility, persons with mental retardation, and at least one client of a regional mental retardation center.
 - (2) Three members shall be professionals from three different associated fields such as social work, education, psychology or medicine.
 - (3) One member shall be a licensed attorney, who is not employed by the Attorney General's Office.
 - (4) Two members shall be selected at large.
- (f) (g) Each regional alcoholic rehabilitation center shall have a committee consisting of five members, none of whom shall be currently employed by the division. The membership shall include at least four persons not employed by the division.
- (1) Two persons shall be members of voluntary groups representing the interests of alcoholics. persons having substance abuse problems.
 - (2) One person shall be a former client or family member of a client or former client of an alcoholic rehabilitation center.
 - (2) One member shall be selected at large and one member may be employed by the facility.
 - (3) Two members shall be selected at-large.

~~(g)~~ (h) Wright School, Whitaker School and any other like state facility established and administered by the division to serve emotionally disturbed children and adolescents each shall have a committee consisting of five members, none of whom shall be currently employed by the division. The membership shall include at least four persons not employed by the division.

- (1) Two persons shall be members of voluntary groups representing the interest of children and adolescents with special needs.
- (2) One person shall be ~~a parent~~ the legally responsible person of a client or former client of a state facility for emotionally disturbed children.
- ~~(2) One member shall be selected at large and one member may be employed by the facility.~~
- ~~(3) Two members shall be selected at-large.~~
- ~~(h)~~ (i) North Carolina Special Care Center at Wilson and any other like state facility established and administered by the division shall have a committee consisting of five members, none of whom shall be currently employed by the division. The membership shall include at least four persons not employed by the division.
- (1) ~~One person shall be a member of a mental health association. One person shall be a senior citizen and one person shall be a family member of a client or former client of the facility. All members shall be knowledgeable about mental health and nursing care issues as evidenced by interest, experience or education.~~
- ~~(2) One member shall be selected at large and one member may be employed at the facility. Four members shall be appointed at-large.~~
- ~~(3) At least one member shall be a client or family member of a client.~~

Statutory Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147.

.0203 EX OFFICIO MEMBERSHIP

- (a) ~~A~~ An internal client advocate may serve as a non-voting member of each human rights advisory committee.
- (b) In addition to the members appointed by the secretary, the chairperson may designate other non-voting ex officio members to assist the committee. Ex officio members may be employees of the division.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0204 TERMS OF OFFICE

~~(a) Members and officers serving upon the effective date of this Rule on human rights committees at the psychiatric hospitals and mental retardation centers as established by DHR Directive 3-77: Advisory Councils shall not be affected by any provisions of this Section during the remainder of their current terms.~~

~~(b) (a) All members shall be appointed to serve three year terms except for the initial terms at state facilities which do did not have human rights advisory committees as established by DHR Directive 3-77: Advisory Councils. upon the original effective date of these rules.~~

~~(c) (b) Initial appointments for each of the five member committees established under Paragraph (a) of this Rule by this Section shall be as follows:~~

- (1) One member shall serve a four-year term, expiring June 30.
- (2) Two members shall serve a three-year term, expiring June 30.
- (3) One member shall serve a two-year term, expiring June 30.
- (4) One member shall serve a one-year term, expiring June 30.

~~(d) (c) Members may be appointed for no more than two consecutive three-year terms.~~

~~(e) (d) If a vacancy occurs due to death, resignation or disqualification, the human rights advisory committee chairperson shall notify the secretary state facility director who shall initiate procedures to fill the vacancy in accordance with Rule .0202(b) in this Section. have the authority to fill the vacancy. Members appointed in this manner shall serve out the term of the of membership represented by the member whose place they are selected to fill.~~

~~(e) Human Rights Advisory Committee members whose appointment terms have expired may continue to serve on the committee until such time that the committee member is notified by the state facility director that another appointment has been made and the committee member's term of appointment has officially expired.~~

~~(f) If a member misses three consecutive meetings without being excused by the chairperson, the chairperson shall notify the secretary who may disqualify the member upon written notification.~~

~~(g) The secretary shall have the authority to remove any member of a human rights advisory committee from office for good cause.~~

Statutory Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147.

.0205 OFFICERS

(a) Each human rights advisory committee shall elect by a majority a chairperson to serve for a period of two years. No person shall serve more than two consecutive terms as chairperson. The chairperson shall be a committee member who not be an employee of the division; does not work directly with clients at the state facility.

(b) Other officers may be elected as needed based on a majority vote of the committee.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0206 MEETINGS

(a) Each human rights advisory committee shall meet at least monthly unless an alternative schedule is approved by the secretary but in no case less than six times per year. Committees may meet more often as necessary at the call of the chairperson. The chairperson shall call a meeting of the committee at any time such is requested by four or more members of a ten-member committee or two or more members of a five-member committee.

(b) A majority of each committee shall constitute a quorum for the transaction of business.

(c) Human rights advisory committees as public bodies are subject to open meetings as specified in G.S. 143-318.9 through 143-318.12. Due to the nature of the deliberations of human rights advisory committees, it is anticipated that some of the issues would be discussed in executive session in accordance with G.S. 143-318.11(a)(7) and (a)(12). The chairperson shall file a schedule of regular meetings with the Secretary of State as specified in G.S. 143-318.12.

Statutory Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147.

.0207 DUTIES

(a) The duties of the human rights advisory committees ~~shall include but are not limited to:~~ are as follows:

- (1) ~~monitoring~~ review of compliance with laws in G.S. 122 C, Article 3, ~~Parts 2 and 3,~~ dealing with the rights of clients, and ~~monitoring any human rights rules promulgated by the division;~~ reviewing the state facility's compliance with the human rights rules in this Subchapter and Subchapter 141 through 141 of this Chapter;
- (2) reviewing ~~monitoring~~ and assessing the efficiency of existing and proposed methods and procedures for protecting the rights of clients of their respective state facilities;

- (3) serving as an independent review body to hear and make recommendations concerning alleged violations of the rights of individuals and groups brought by clients, client advocates, parents, guardians, ~~staff,~~ state facility employees, or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
 - (4) reviewing programs and services ~~which~~ that deal with the legal and human rights of clients;
 - (5) reviewing cases of alleged abuse, neglect or exploitation or failure to provide services of whatever nature brought by clients, client advocates, parents, guardians, ~~staff state facility employees,~~ or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
 - (6) reviewing cases brought by clients, client advocates, parents, guardians, ~~staff state facility employees,~~ or others regarding the use of seclusion, physical or mechanical restraint, intrusive or aversive procedures, electroconvulsive therapy, medication prescribed above recommended dosages as specified in 10 NCAC 14F .0600 or any procedures carried out against the will of the client. The committee may determine the extent of the review, including but not limited to statistical review and individual case review involving a review in compliance with Rule .0209 of this Section of the client record;
 - (7) reviewing complaints, grievances or ~~any~~ other client rights issues of concern brought by clients, client advocates, parents, guardians, ~~staff state facility employees,~~ or others in compliance with Rule .0209 of this Section for any necessary review of the client record; and
 - (8) reviewing any issues of concern brought by the state facility director, division director, a deputy director, or the secretary.
- (b) The duties listed in Paragraph (a) of this Rule shall not be interpreted to allow human rights advisory committees to concern themselves with the management of the respective state facilities except where there is an issue of violation of a client's rights.
- (c) Annually, by September 1, each committee shall submit, through the division director, to the secretary a report of its activities, accomplishments, and recommendations for the previous year, July 1 through June 30.

Statutory Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147.

.0208 PROCEDURES

(a) There shall be a written agreement governing the relationship and responsibilities of the state facility director, human rights advisory committee and client advocate. Such agreement may be superseded by any written agreements between the division and the Governor's Advocacy Council for Persons with Disabilities.

(b) If the majority of the human rights advisory committee feels that an issue requires ~~remedial~~ action, the chairperson of the committee shall submit a written statement regarding the issue to the state facility director and indicate a desired response date. The issue shall be brought to the attention of the state facility director. If the committee is not satisfied with the actions of the state facility director, the issue shall be brought to the attention of the division director and the appropriate deputy director simultaneously. If the committee is not satisfied with the action of the division director or the deputy director involved, the issue shall be brought to the attention of the secretary.

(c) If the majority of the committee votes that an issue does not require ~~remedial~~ action, but two or more members feel strongly that some action is necessary, these members may submit a minority report to the state facility director, the division director and deputy director, and the secretary in the same manner as a majority decision.

(d) In cases deemed appropriate by the committee, steps in the communications procedure as outline in Paragraph (b) of this Rule may be omitted, provided that the person in authority in each omitted step is notified in writing.

(e) The committee may also seek help in solving problems from the Governor's Advocacy Council for Persons With Disabilities, Governor's Advocacy Council on Children and Youth, the Commission for Mental Health, Mental Retardation and Substance Abuse Services, and/or the Developmental Disabilities Council on Developmental Disabilities, ~~or any other source when such action is agreed upon by majority vote~~. In these cases, persons in authority at each step of the prescribed communications procedure as outlined in Paragraph (b) of this Rule shall be notified in writing. Minority report procedures, as outlined in Paragraph (c) of this Rule, shall be applicable in this procedure as well.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0209 CONFIDENTIALITY

(a) Committee members shall have access to the records of clients only upon written consent of the client ~~parent or guardian or legally responsible person~~ as specified in ~~APSM 45-1 and 10 NCAC 18D .0215~~ "Confidentiality Rules", division publication APSM 45-1. This document is available for inspection in each state facility or in the Publications Office of the division. This right of access is granted so that the committees may perform their duties of overseeing and monitoring the action of the state facility.

(b) Committee members shall treat the client record as confidential information as specified in ~~10 NCAC 18D .0123~~ 18D .0124.

Statutory Authority G.S. 122C-53(a); 122C-64; 131E-67; 143B-147.

.0210 LIMITATIONS ON REPRESENTATION

In order for a professional to be a member of a human rights advisory committee he/she must agree not to accept a client of the state facility as a private client for remuneration for professional services on the client's behalf during the member's term. If a professional, while a member of the committee, accepts such a client, then he/she becomes disqualified to serve on the committee.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0211 STATE FACILITY RESPONSIBILITY

(a) The state facility director shall provide necessary clerical and support services to the human rights advisory committee.

(b) The state facility director shall provide an orientation to the state facility for new members of the committee at the chairperson's request.

(c) The state facility director shall assure that the facility's Staff Development Services shall implement the division's annual plan of training for human rights advisory committee members.

(d) The state facility director shall be responsible for the reimbursement of mileage expenses for members of the committee who request financial assistance to attend regularly scheduled meetings.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

.0212 DIVISION RESPONSIBILITY

(a) The division director shall serve as the point of contact between the committees and the secretary.

(b) The division's training office, in conjunction with the Governor's Advocacy Council for Persons with Disabilities (GACPD), shall de-

velop an annual plan of training for human rights advisory committee members.

~~(b)~~ (c) The division director shall ~~coordinate training and~~ provide collaboration opportunities for each state facility human rights advisory committee and shall assure an opportunity for committee chairpersons to meet at least annually.

(d) The division director shall provide written orientation materials for all new members. ~~and~~ Written training materials shall cover at a minimum the structure and role of the division; the role of state facility human rights advisory committees; state statutes; and rules codified in the North Carolina Administrative Code regarding human rights and related areas of concern.

~~(e)~~ The division director shall develop a written policy and procedure concerning the reimbursement of mileage expenses for members who request financial assistance to attend regularly scheduled meetings.

Statutory Authority G.S. 122C-64; 131E-67; 143B-147.

SECTION .0300 - INFORMING CLIENTS AND STATE FACILITY EMPLOYEES OF RIGHTS

.0301 INFORMING CLIENTS OF RIGHTS

~~(a)~~ Each client has the right to be informed of his/her rights as a client of the facility.

~~(b)~~ (a) The state facility director shall assure that all clients and legally responsible persons are informed of the client's rights at the time of admission or not more than 24 hours after admission [with the exceptions specifically provided for in Paragraph ~~(e)~~ (b) of this Rule]. The state facility shall develop a policy which includes, but is not limited to, the following:

- (1) specifying who is responsible for informing the client;
- (2) providing a written copy of rights to clients who can read and explaining the ~~written materials~~ rights to all clients;
- (3) ~~obtaining documentation~~ documenting in the client record that rights have been explained to the client;
- (4) posting copies of rights and the person or office to contact for information regarding rights in ~~each client living area; areas accessible to the client.~~
- (5) describing the role of the human rights advisory committee and internal client advocate and how to utilize their services; and
- (6) informing the ~~parent or guardian~~ legally responsible person that they may request notification after any occurrence of the use of an emergency procedure as speci-

fied in 10 NCAC 14J .0203, .0204 and .0205.

~~(e)~~ (b) If the client cannot be informed of his/her rights within 24 hours after admission because of his/her condition or if the ~~parent or guardian~~ legally responsible person cannot be notified within 24 hours after admission, then this exception and any alternative means of implementing this right shall be documented. However, the state facility may delay notifying ~~parents and guardians~~ the legally responsible person of client's rights for up to 72 hours when necessary for week-end admissions.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0302 INFORMING STATE FACILITY EMPLOYEES

The state facility director shall assure that all ~~staff~~ state facility employees are informed of the rights of clients and shall develop a policy which includes but is not limited to the following:

- (1) specifying who is responsible for informing new and ~~continuing staff~~ existing state facility employees;
- (2) distributing written copies of client rights as specified in Article 3 of Chapter 122C to all ~~staff~~ state facility employees and obtaining documentation that state facility employees have read and understand the client rights;
- (3) obtaining documentation that qualified professionals on staff have read and understand client rights as specified in ~~G.S. 122-55.1 through 122-55.14~~ Article 3 of Chapter 122C of the N.C. General Statutes and regulations as specified in 10 NCAC 14G through 14J;
- (4) establishing a procedure ~~with documentation to train, review or update staff for training or updating state facility employees'~~ awareness of client rights as specified in Article 3 of Chapter 122C of the N.C. General Statutes, 10 NCAC 14G, 14H, 14I and 14J, and through state facility policy at least annually and whenever changes occur. Such education shall be documented; and
- (5) identifying individuals who can be contacted to answer questions regarding rights.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0303 NOTIFICATION ON GUARDIANSHIP

(a) The client shall be informed of the different aspects and policies concerning guardianship when the use of guardianship becomes an issue.

(b) The client shall be permitted to participate as fully as possible in all decisions that will affect him/her. State facility staff employees shall seek to preserve for the incompetent adult client the opportunity to exercise those rights that are within his/her comprehension as specified in G.S. 35-1.6(4) and (5).

(c) The state facility director shall assure that incompetency proceedings are pursued for adult clients when the treatment team determines that the client is unable to make or communicate important decisions about his/her life. To the extent possible, statutory proceedings for limited guardianship rather than full guardianship should be pursued.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0304 INFORMING CLIENTS OF POLICIES

The state facility director shall assure that each client ~~is~~ and the legally responsible person are informed of the following:

- (1) the state facility policy on reimbursement or criminal liability for personal or property damage caused by the client to the state facility, other clients, employees, visitors or their property;
- (2) the state facility policy on charges for treatment or habilitation services as consistent with 10 NCAC 14I .0310;
- (3) the state facility rules and regulations that the client is expected to follow and possible penalties for violations;
- (4) the state facility grievance procedure; ~~and~~
- (5) the state facility's authority to initiate, when appropriate, involuntary commitment procedures for a voluntary client; and
- (6) the state facility policy on search and seizure.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0305 RESEARCH

The state facility director shall assure that all research involving human subjects is conducted in accordance with accepted research practices and is reviewed according to ~~10 NCAC 14C Section .0800~~ 10 NCAC 14C .0800. Research ~~which that~~ places human subjects at risk, except minimal risk research, shall be subject to the Department of Health and Human Services policy for the protection of human research subjects as codified in 45 C.F.R. 46.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

.0306 CONSENT TO PARTICIPATE IN RESEARCH

(a) The state facility director shall assure that all clients who participate in research, except minimal risk research, elect to do so after having received a full explanation of the purpose, potential benefits and risks of participation.

(b) Informed written consent shall be obtained from the client or legally responsible person for each new research project. Whenever a client is adjudicated incompetent and is a ward of the state, or whenever a client adjudicated incompetent or a minor client objects to participation in a research project, the client shall not participate in the research project. Consent shall be documented in the client record and shall include:

- (1) client or legally responsible person's signature and date;
- (2) brief description of the research project;
- (3) length of consent, which shall not exceed six months without renewal;
- (4) notification that consent may be withdrawn at any time without penalty;
- (5) explanation of any potential risks and plans to reduce or address such risks;
- (6) signature and title of the investigator and date;
- (7) disclosure of any established alternative procedures that would probably achieve similar therapeutic goals as those anticipated through the research; and
- (8) a provision that the client or legally responsible person will be given notification of any significant changes in the research procedures which directly affect the client.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

SUBCHAPTER 14H - CIVIL AND LEGAL RIGHTS

SECTION .0100 - GENERAL RIGHTS

.0101 RIGHT TO LIVE AS NORMALLY AS POSSIBLE (REPEALED)

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0102 COMPETENCY OF ADULT CLIENTS

(a) ~~Each adult client has the right to exercise basic human rights as specified in G.S. 122-55.4 and 122-55.7.~~

(b) ~~Each adult client retains the right to exercise all civil rights unless adjudicated incompetent as specified in G.S. 122-55.2(c).~~

(c) Each adult client at all times retains the right to send and receive sealed mail, and to contact legal counsel and private physicians as specified in G.S. 122-55.2(a) and according to procedures specified in 10 NCAG 14H .0201 and .0202 and 14J .0101.

(d) Each adult client retains additional rights as specified in G.S. 122-55.2(b) unless these rights are limited or restricted in writing on a standard form in the client's treatment or habilitation plan for a period not to exceed 60 days unless renewed in writing on a standard form.

Each adult client has the right to be considered legally competent unless adjudicated incompetent under the provisions of Chapter 35A of the General Statutes; and each incompetent adult client has the right to be restored to legal competency as specified in Chapter 35A of the General Statutes.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0103 BASIC RIGHTS

(a) Each minor client has the right to exercise basic human rights as specified in G.S. 122-55.13.

(b) Each minor client may at all reasonable times communicate with those having legal custody and with legal counsel and private specialists of his/her choice or his/her legal custodian or guardian's choice, at his/her own expense as specified in G.S. 122-55.14(a) and according to procedures specified in 10 NCAG 14H .0201 and .0202 and 14J .0101.

(c) Each minor client retains additional rights as specified in G.S. 122-55.14(b) unless these rights are limited or restricted in writing in a client's treatment plan for a period not to exceed 60 days unless renewed in writing on a standard form.

(a) Each client in a state facility has the right to exercise basic human rights as specified in G.S. 122C-51, 122C-52(c), 122C-54(c), 122C-57, 122C-58, 122C-61, and 122C-62.

(b) Only those rights specified in G.S. 122C-62(b) and 122C-62(d) may be restricted by the state facility. Such restrictions shall be in accordance with G.S. 122C-62(e).

Statutory Authority G.S. 122C-51; 122C-52; 122C-57; 122C-58; 122C-61; 122C-62; 131E-67; 143B-147.

.0104 RELIGIOUS RIGHTS

(a) Each client has the right to participate in religious worship as specified in G.S. 122-55.2(b)(7) and 122-55.14(b)(4), 122C-62(b)(7) and 122C-62(d)(7).

(b) Participation shall be voluntary, but worship opportunities, services, religious education programs, pastoral counseling, or pastoral visitation shall be permitted accessible for those who choose to participate.

(c) Clients shall be permitted to participate in religious services in the community unless otherwise limited in the treatment or habilitation plan, as specified in 10 NCAG 14J .0103.

(d) Suitable space for religious worship shall be made available by the state facility.

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

SECTION .0200 - LEGAL RIGHTS

.0201 ACCESS TO LEGAL SERVICES

(a) All adult clients ~~shall retain have~~ the right to contact and consult with legal counsel of their choice according to the provisions of G.S. 122-55.2(a)(2). ~~All minor clients have the right to initiate and receive communication and consult with legal counsel of their choice or their parent's or legal custodian's choice according to the provisions of G.S. 122-55.14(a)(2), 122C-62(a)(2) and 122C-62(c)(2).~~

(b) Information regarding the availability of legal services shall be given to all clients and shall be posted ~~on bulletin boards in in areas accessible to all clients. living areas.~~ Information provided by legal assistance programs concerning the availability of their services for the indigent clients shall be posted in areas accessible to all clients. ~~areas.~~ Each state facility director shall ensure that all state facility staff employees are informed of the availability of legal services for clients in a manner deemed appropriate by the state facility director, including the right of clients to communicate and consult with attorneys.

(c) ~~Scheduling appointments through the facility director is not a requirement for clients to meet with an attorney or vice-versa. However, clients and attorneys are requested to schedule appointments through the facility director. It is recommended that appointments be scheduled not only to ensure that the client is available at the proper time without disruption of the client's treatment or habilitation plan or meals, but also to allow the facility to maintain security where needed.~~

(d) (c) Each state facility director shall designate locations where clients and attorneys may conduct their interviews in privacy.

Statutory Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 131E-67; 143B-147.

.0202 NONPROFIT LEGAL SERVICES ORGANIZATIONS

Each state facility director shall designate an interview room where clients may, at regularly scheduled hours, privately communicate and consult with an attorney employed by or affiliated with a nonprofit legal services organization. During these scheduled hours, any client who desires to consult with an attorney may do so without an appointment. Upon written request by a nonprofit legal services organization, such an interview room shall be made available in each building occupied by clients. The frequency of making such an interview room available and the hours it shall be available shall be at the discretion of the state facility director; however, such interview room shall be available at least twice per month. Information regarding the time and date when such legal services will be available and the specific location of such interview room shall be posted ~~on bulletin boards in all client living areas accessible to the client~~ in the buildings involved.

Statutory Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 131E-67; 143B-147.

.0203 STATE FACILITY GRIEVANCE PROCEDURE AND REPORTS

(a) Each state facility shall have a written procedure to process clients' formal grievances in a fair, timely, and impartial manner. The grievance procedure shall specify that it is not intended to cover informal verbal expressions of dissatisfaction or discontent which can be resolved informally.

(b) The grievance procedure shall include the following:

- (1) a provision stating that grievances may be filed on behalf of a client by:
 - (A) the client;
 - (B) ~~the parent or person of agency having legal custody~~ legally responsible person of a minor client or incompetent adult client;
 - ~~(C) the guardian of an incompetent client;~~
 - ~~(D)~~ (C) the internal client advocate; or
 - ~~(E)~~ (D) any other competent adult, including ~~staff~~, a state facility employee, who has been designated by the client and given written consent to bring a grievance on his/her behalf;
- (2) a provision requiring grievances to be filed in writing and a copy sent to the internal client advocate;
- (3) a provision specifying the progressive steps of the grievance process and ~~staff members~~ state facility employees by position responsible for hearing the grievance at

each step. Such provision shall state whether the state facility's human rights advisory committee shall be included in the progression. (The absence of such a provision shall in no way prevent clients from presenting their concerns to the human rights advisory committee at any time. Such a provision would simply include it in the routine progression.) The progression should begin at a level closest to the client such as the client's ~~primary~~ qualified responsible professional and, if unresolved, progress through the organizational structure of the state facility. The treatment team and the state facility director shall be included in the progression;

- (4) a provision specifying the number of days for action to be taken at each level;
- (5) a provision specifying required written documentation for the grievance including, at a minimum, a description of the grievance, all parties involved, dates and actions taken at each step and specifying ~~staff state facility employees~~ responsible for such documentation and where in administrative files the record of documentation shall be filed; and
- ~~(6)~~ a provision stating whether the facility's human rights committee shall be included in the progression (The absence of such a provision shall in no way prevent clients from presenting their concerns to the human rights committee at any time; such a provision would simply include it in the routine progression); and
- ~~(7)~~ (6) a provision stating that the state facility director shall make a final decision regarding the grievance before the client may request review of the decision by the division according to Rule .0204 of this Section.

(c) All final decisions relative to grievances filed on behalf of clients shall be reviewed by the human rights advisory committee whenever such review is in accordance with 10 NCAC 14G .0209.

~~(e)~~ (d) The state facility director shall submit a written report at least annually to the human rights advisory committee and internal client advocates which documents the number, nature, and resolution of grievances at the state facility for the previous year.

Statutory Authority G.S. 131E-67; 143B-147.

.0204 DIVISION DIRECTOR'S REVIEW OF GRIEVANCES

(a) If a client [or client's representative as specified in Rule .0203(b)(1) (D) of this Section] is dissatisfied with the state facility director's decision in a grievance, the client (or client's representative) may request a review of the state facility director's decision by the division.

(b) The client (or client's representative) shall submit a written request for review of the decision to the appropriate deputy director of the division (as indicated by the state facility director). The request shall indicate:

- (1) a description of the grievance;
- (2) action taken by the state facility director; and
- (3) preferred action of the client.

(c) The deputy director receiving the request for review of the decision shall notify the division director, division's assistant director for quality assurance and any other deputy or assistant director whose responsibilities overlap in the area of the grievance.

(d) The deputy director receiving the request shall collect information on the issue and make a determination in consultation with any other deputy or assistant director involved.

(e) The deputy director shall make a recommendation to the division director within 10 working days from the date of the receipt of the request.

(f) The division director, after appropriate consultation, shall issue a written decision to the requesting party within 20 working days from the original date of the receipt of the request by the deputy director.

(g) The division director's decision shall be considered the final administrative review to be undertaken by the division.

Statutory Authority G.S. 131E-67; 143B-147.

.0205 DEPARTMENT REVIEW OF GRIEVANCE

(a) The client [or client's representative ~~designated~~ as specified in Rule .0203(b)(1) (D) of this Section] may pursue further review by the department by submitting a written request to the secretary. Such written request should indicate:

- (1) a description of the grievance;
- (2) action taken by the state facility director and division director; and
- (3) preferred action of the client. ~~and~~
- (4) ~~a deadline (allowing for at least 15 working days) after which final administrative review will be considered exhausted.~~

(b) The secretary shall conduct a review of the grievance and submit his decision in writing to the client or client's representative at least 30 days following receipt of the request. The secretary's review shall be the final administrative review.

Statutory Authority G.S. 131E-67; 143B-147.

.0206 ACCESS TO INTERNAL CLIENT ADVOCATE

The state facility director shall assure each client access to ~~a~~ an internal client advocate in accordance with G.S. 122C-62(a)(3) and 122C-62(c)(3).

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0207 CLIENT ADVOCATE ACCESS TO CONFIDENTIAL INFORMATION

(a) Client advocate access to client records is governed by 10 NCAC 18D.0325 of the confidentiality regulations (division publication APSM 45-1). confidential information shall be in accordance with G.S. 122C-53(e), (f) and (g).

(b) Whenever a minor client is admitted to a regional psychiatric hospital which provides educational services, the client advocate may have access to the educational records in accordance with G.S. 122C-53(a). The state facility director shall establish policies and procedures for obtaining consent upon admission of the minor client to the state facility, which allows the client advocate access to the educational records.

Statutory Authority G.S. 122C-53; 122C-62; 131E-67; 143B-10; 143B-147.

.0208 DEATHS AND AUTOPSIES

(a) The state facility director shall adopt a written policy, available to the client upon request, specifying procedures to be taken upon the death of a client which shall provide for:

- (1) a physician's certification of the death as soon as possible;
- (2) making reasonable efforts to locate the client's next of kin;
- (3) notification of the state facility director and the internal client advocate;
- (4) notification of the County Medical Examiner when the attending physician or state facility director (at the time of the client's death) determines that the death falls under the jurisdiction of the County Medical Examiner as specified in G.S. 130A-383 and 130A-389; ~~and 10 NCAC 11.0200;~~ and documentation of the Medical Examiner's report in the client record; and
- (5) disposition of the body when no next of kin or interested individuals can be located and no funeral arrangements have been made, including notification of the Com-

mission of Anatomy as specified in G.S. 130A-415.

(b) A competent client, or incompetent adult client or minor client through his/her legal guardian, or minor client through his/her parent or person or agency having legal custody legally responsible person, has the right to prearrange his/her funeral at no expense to the state.

(c) No autopsy shall be performed on the body of a deceased client unless permission has been given for the autopsy by the appropriate person as specified in G.S. 130A-398 or unless such autopsy is otherwise required or permitted by law as specified in G.S. 130A-389, 130A-399 or 130A-400.

Statutory Authority G.S. 130A-383; 130A-389; 130A-398; 130A-415; 131E-67; 143B-147.

SECTION .0300 - LABOR RIGHTS

.0301 EMPLOYMENT CONDITIONS

(a) Each client ~~has the right to receive compensation for who performs work performed~~ which is of economic value to the state facility shall receive compensation for such work.

(b) ~~The A~~ state facility may allow the client to work for the facility only under the following conditions:

- (1) if the work is part of the client's individual treatment or habilitation plan;
- (2) if the work is performed voluntarily;
- (3) if the client is paid wages commensurate with the economic value of the work on the open market (except as specifically explained in Rule .0302 of this Section); and
- (4) if the work project complies with local, state and federal laws and regulations.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0302 VOLUNTARY NON-COMPENSATED WORK

The state facility may establish a policy allowing clients, upon their request, to do voluntary non-compensated work. The policy shall:

- (1) provide for protecting the client from abuse or exploitation;
- (2) provide for the work to be time limited and part of the client's treatment or habilitation plan;
- (3) provide that voluntary work performed by clients consists of tasks appropriate to the age or developmental level of the client;
- (4) provide for review by the guardian legally responsible person of an incompetent adult

or minor client or internal client advocate in all other cases of client volunteer work before the work is begun; and

- (5) prohibit substitution of voluntary non-compensated work for other more appropriate treatment or habilitation opportunities.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

SECTION .0400 - NON-DISCRIMINATION

.0401 TITLE VI CIVIL RIGHTS ACT 1964

The state facility director shall assure that the services of the state facility are provided in compliance with the requirements specified in Title VI of the Civil Rights Act of 1964 and 45 C.F.R. 80 regarding the prohibition of discrimination based on race, color, national origin, sex, or handicap.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0402 DHR DIRECTIVE - INTERPRETER SERVICES

The state facility director shall assure that the services of the state facility are provided in compliance with the requirements specified in the Department of Human Resources Directive, Subject: Operations, Provision of Interpreter Services for the Deaf, Number 1-81, 37, Effective Date: June 1, 1981, 1987, establishing the provision of interpreter services for the deaf and hearing impaired.

Statutory Authority G.S. 122C-51; 131E-67; 143B-10; 143B-147.

.0403 STATE AND FEDERAL REGULATIONS

The state facility director shall assure that the services of the state facility are provided in compliance with all applicable state and federal statutes and regulations regarding non-discrimination, including but not limited to discrimination against a handicapped person as specified in G.S. 168-1 through 168-23, G.S. 168A and Section 504 of the Rehabilitation Act (29 U.S.C.).

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

SUBCHAPTER 14I - DIGNITY AND RESPECT

SECTION .0100 - SAFE ENVIRONMENT

.0101 PROTECTION FROM HARM

(a) Each client has the right to be free State facility employees and volunteers at a state facility shall protect clients from harm, abuse, neglect and exploitation in accordance with G.S. 122C-66.

(b) State facility employees shall not subject a client to any sort of punishment, neglect, or indignity or inflict physical or mental abuse upon any client including, but not limited to, striking, burning, cutting, teasing, taunting, jerking, pushing, tripping or baiting a client.

(c) State facility employees, visitors and clients shall not engage in any type of sexual activity with a offenses relating to another client as specified in G.S. 122C-65.

(d) State facility employees shall use only that degree of force necessary to repel or secure a violent and aggressive client. The degree of force that is necessary depends upon the individual characteristics of the client (such as age, size and physical and mental health) and the degree of aggressiveness displayed by the client. The state facility director may establish policies on the use of force and specific techniques. State facility employees using specific physical intervention techniques shall be trained in their use.

(e) State facility employees shall not borrow money from a client or a client's family or receive gratuity except a non monetary gift of nominal value from a client. The state facility employee shall not sell or buy goods or services to or from a client except through established state facility policy. The state facility shall provide safeguards for protecting the client from this type of exploitation and abuse.

(f) State facility employees shall exercise all due precaution to protect each client from physical or mental abuse by other clients.

(g) The state facility director shall establish policies to protect the client from exploitation by other clients by discouraging the loaning or borrowing of money and possessions between clients and by discouraging the selling and buying of goods or services between clients.

Statutory Authority G.S. 122C-65; 122C-66; 122C-67; 131E-67; 143B-147.

.0102 CORPORAL PUNISHMENT

Corporal punishment is prohibited, as specified in G.S. 122-55.4. The use of corporal punishment by employees will be considered abuse and investigated as such as specified in Rule .0103 of this Section. 122C-59.

Statutory Authority G.S. 122C-59; 131E-67; 143B-147.

.0103 REPORTING ABUSE: NEGLECT OR EXPLOITATION

(a) The state facility director shall develop a written policy specifying procedures for reporting and investigating all cases of alleged or suspected abuse, neglect or exploitation occurring when the client is under the supervision of the state facility. The policy shall be in accordance with G.S. 122C-66 and shall include at least the following provisions:

- (1) specifications of the progressive steps in the reporting and investigation process for all cases of alleged or suspected abuse, neglect or exploitation, staff positions responsible for investigation, and time periods to be observed for each step;
- (2) a requirement for immediate intervention by any state facility employee witnessing abuse, neglect or exploitation;
- (3) a system of immediate reporting of any suspected abuse, neglect or exploitation which includes but is not limited to the internal client advocate and appropriate staff state facility employees and provisions for confidential reporting;
- (4) the arrangement for immediate medical evaluation where major physical injury is involved or suspected;
- (5) the designation of a staff person state facility employee or position to conduct a preliminary investigation, including the review of written reports by all state facility employees involved;
- (6) in the event that a complete investigation is indicated, the notification of the client advocate, the human rights committee, state facility director, the legally responsible person parent (or person or agency having legal custody of a minor or client), and guardian of an incompetent adult client, and the internal client advocate. The human rights advisory committee may be notified that there is a complete investigation indicated; however, human rights advisory committee involvement shall be in accordance with 10 NCAC 16G .0209.
- (7) a requirement for immediate reporting of any alleged or suspected abuse, neglect or exploitation whenever there is a reasonable cause to believe that the client is in need of protective services (as defined in G.S. Chapter 108A, Article 6 and G.S. Chapter 7A, Article 44) to the county department of social services by any employee the state facility director or designee as specified in G.S. Chapter

108A, Article 6 or G.S. Chapter 7A, Article 44;

- (8) a provision to allow an independent investigation by the internal client advocate and human rights committee, when in accordance with 10 NCAC 14G .0209, reporting directly to the state facility director; and
- (9) a provision to ensure that all state facility employees remain aware of the procedures and are aware of their rights and responsibilities if they are witness to, or aware of, or accused of abuse, neglect or exploitation.

(b) Cases of suspected abuse, neglect or exploitation occurring when the client is not under the direct or immediate supervision of the state facility shall be reported to the county department of social services by any state facility employee suspecting it abuse, neglect or exploitation as specified in G.S. Chapter 108A, Article 6 or G.S. Chapter 7A, Article 44.

Statutory Authority G.S. 7A, Article 44; 108A, Article 6; 122C-51; 122C-59; 122C-65; 122C-66; 122C-67; 131E-67; 143B-147.

.0104 SAFE BUILDINGS AND GROUNDS

(a) Each client ~~has the right to~~ in a state facility shall live and receive care, treatment, or habilitation in a safe and sanitary environment.

(b) The state facility director shall assure the provision of a safe and sanitary environment which is in compliance with the sanitation, health and environmental safety codes of state and local authorities.

(c) The state facility director shall have specific plans and shall develop and enforce policies designed to keep the state facility in good repair and operation in accordance with the needs of health, comfort, safety and well-being of the clients.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0105 MEALS

(a) Each client ~~has the right to~~ in a state facility shall receive a balanced and nutritionally adequate daily diet.

(b) Dietary services of the state facility shall adequately meet the individual dietary needs of the client and meet the preferences of the client to the extent possible.

(c) The dietary service and dietary service personnel shall meet local and state codes.

(d) The state facility dietary service shall serve at least three meals per day on a schedule which

approximates a generally accepted morning, noon and evening meal.

(e) Meals should be served attractively.

(f) Appropriate therapeutic feeding techniques shall be used if the client is unable to feed himself or herself.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0106 REPORTING CLIENT INJURIES

Whenever a minor or incompetent adult client experiences a major physical injury, the legally responsible person shall be immediately notified. Whenever a competent adult experiences a major physical injury, the client's designated next of kin may be notified of the injury when such notification is in accordance with G.S. 122C-53(a).

Statutory Authority G.S. 122C-51; 122C-53(a); 131E-67; 143B-147.

SECTION .0200 - ESTHETIC AND HUMANE ENVIRONMENT

.0201 STATE FACILITY ENVIRONMENT

(a) The state facility director shall assure the provision of an esthetic and humane environment which enhances the positive self-image of the client and preserves human dignity. This includes:

- (1) providing warm and cheerful furnishings;
- (2) providing flexible and humane schedules;
- (3) directing ~~staff~~ state facility employees to address clients in a respectful manner; and
- (4) providing adequate areas accessible to clients who wish to smoke tobacco and areas for non-smokers as requested.

(b) The state facility director should also, to the extent possible, make every effort to:

- (1) provide a quiet atmosphere for uninterrupted sleep during scheduled sleeping hours; and
- (2) provide areas accessible to the client for personal privacy, for at least limited periods of time, unless determined inappropriate by the treatment team.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0202 ACTIVITIES

(a) ~~Clients have a right to regular physical exercise several times a week. The facility shall provide space, supervision, and equipment for such exercise. Each state facility shall provide space, supervision and equipment for client activities and exercise in accordance with G.S. 122C-62(b)(5) and G.S. 122C-62(d)(5).~~

~~(b) The facility director shall assure the client the right to be outdoors daily.~~

~~(c) (b) The state facility director shall assure that clients have reasonable access to entertainment equipment in working order such as a television, radio, phonograph, and appropriate recreational equipment.~~

~~(d) (c) Any imposed limitation on the client's freedom to exercise his/her rights in (a) through (e) of this Rule by the responsible professional shall be documented in the client's individual treatment plan, accordance with G.S. 122C-62(c).~~

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0203 PERSONAL LIVING SPACE

Each client ~~has a right to~~ in a state facility may suitably decorate his/her room, or portion of a multi-resident room, with respect to the client's choice, normalization principles, and with respect for the physical structure. The state facility director may establish written policies and justifications which limit this right for special admissions such as medical surgical, forensic, or short-term admissions where admission is for less than 30 days.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

.0204 HEALTH: HYGIENE AND GROOMING

(a) The state facility director shall assure each client the right to dignity, privacy and humane care in the provision of personal health, hygiene and grooming care including, but not limited to:

- (1) individualized bathing schedules to promote privacy;
- (2) an opportunity for a shower or tub bath daily, or more often as needed;
- (3) the opportunity to shave at least once every two days;
- (4) access to the services of a barber or a beautician on a regular basis; and
- (5) provision of linens and towels, toilet paper and soap for all clients and other individual personal hygiene articles for indigent clients. Such other articles include but are not limited to toothpaste, toothbrush, sanitary napkins, tampons, shaving cream and shaving utensil.

(b) Bathtubs or showers and toilets which ensure individual privacy shall be available. All bathtubs and shower areas shall be divided by curtains, doors or partitions. Toilets shall be in separate stalls.

(c) Adequate toilets, lavatory and bath facilities equipped for use by clients with mobility impairments, shall be available.

Statutory Authority G.S. 122C-51; 131E-67; 143B-147.

SECTION .0300 - PRIVACY AND PERSONAL FREEDOM

.0301 COMMUNICATION RIGHTS

(a) The following rights to communicate shall be retained by clients:

- (1) All adult clients shall have at all times the right to send and receive sealed mail as specified in G.S. 122-55.2(a)(1). The facility schedule shall be posted as to the collection and distribution of mail and packages.
- (2) Each minor client shall have the right at all reasonable times to communicate with the individual or agency having legal custody.

(b) The following rights shall be retained by all adult clients unless restricted in writing in the client's treatment plan for a period not to exceed 60 days unless renewed in writing:

- (1) All adult clients shall have the right to make and receive confidential telephone calls as specified in G.S. 122-55.2(b)(1). Telephones located in private areas shall be accessible to clients.
- (2) All adults have the right to receive visitors daily during regularly scheduled hours which meet the requirements of G.S. 122-55.2(b)(2). Visiting hours at the facility shall be posted in all client living areas.
- (3) Suitable areas indoors shall be made available for adult clients and visitors to visit in private. The areas where clients may receive visitors may be specified by the facility director.
- (4) All adult clients have the right to make visits outside of the facility when in the best interest of the client unless the client was committed to determine his/her capacity to proceed to trial in a criminal proceeding, or under G.S. Chapter 122, Article 11 regarding mentally ill criminals, or unless the client was committed as the result of conduct resulting in his/her being charged with a violent crime and was found not guilty by reason of insanity or incapable of proceeding, in which case G.S. 122-58.13 shall be followed.
- (5) Limited postage shall be made available to indigent clients.

(e) The following rights shall be retained by all minor clients unless restricted in writing in a client's treatment plan for a period not to exceed 60 days unless renewed in writing:

- (1) All minor clients have the right to receive such assistance as needed in sending and receiving correspondence and in making telephone calls at their own expense.
- (2) All minor clients have the right to receive visitors daily, under appropriate supervision, during regularly scheduled hours [which meet the requirements of G.S. 122-55.14(b)(6)], such visiting not to take precedence over school or therapies.
- (3) Suitable areas indoors shall be made available for minor clients and visitors to visit as free as possible from disturbance by other clients. The areas where clients may receive visitors may be specified by the facility director.
- (4) Limited postage shall be made available to indigent clients.

(a) In order to ensure the protection of client rights specified in G.S. 122C-62(a)(1) and G.S. 122C-62(d)(2), each state facility shall post the state facility schedule for the collection and distribution of mail and packages in areas accessible to clients. Limited postage shall be made available to indigent clients. State facility employees shall provide assistance to clients as needed in sending and receiving correspondence. Such physical assistance may include writing letters, wrapping packages or reading letters to clients upon their request.

(b) Adult clients in state facilities shall have access to telephones in private areas in order to ensure the protection of the client right specified in G.S. 122C-62(b)(1). Access to telephones by minor clients in state facilities shall be in accordance with G.S. 122C-62(d)(1). State facility employees shall assist adult and minor clients in placing calls upon request of the client.

(c) In order to ensure the protection of client rights specified in G.S. 122C-62(b)(2) and G.S. 122C-62(d)(3), each state facility shall post visiting hours in areas accessible to clients. The state facility director may establish the same visiting hours for the entire state facility or different visiting hours for different client living areas within the state facility. Suitable areas indoors shall be made available for adult clients and visitors to visit in private, and minor clients and visitors to visit as free as possible from disturbance by other clients. The areas where clients may receive visitors may be specified by the state facility director.

(d) Clients being held at a state facility to determine capacity to proceed to trial pursuant to

G.S. 15A-1002 may receive visitors as specified in G.S. 122C-62(b)(2) and G.S. 122C-62(d)(3). The following limitations shall be imposed in accordance with G.S. 122C-62(g); however, no limitations shall be imposed on visitations by those persons specified in G.S. 122C-62(a)(2), (a)(3), (c)(1), (c)(2), and (c)(3):

- (1) Each state forensic facility may establish a policy limiting visitations by:
 - (A) precluding visits for up to the first three days;
 - (B) imposing a visit duration limit; and
 - (C) limiting the number of visitors, as long as criteria are established making such limitations on an individual basis in order to promote the health, safety and welfare of the clients.
- (2) The client shall prepare a list of visitors whom he/she desires to see. Only those visitors specified by the client will be permitted to visit with the client. Clients shall be informed whenever a visitor arrives at the state facility who is not on the list of visitors designated by the client, and the client shall have the option to add the visitor to the list.
- (3) All visitors shall present proper identification upon request.
- (4) Visitors, other than the client's immediate family, clergyman and attorney, shall be approved for visitation by the client's responsible professional.
- (5) To ensure that no contraband is carried into the unit where the client is located, no purses/handbags or other items capable of concealing contraband will be permitted in the unit and visitors may be subject to routine searches.

(e) Adult clients retain the rights specified in G.S. 122C-62(a)(1), (2) and (3) at all reasonable times. Minor clients retain the rights specified in G.S. 122C-62(c)(1), (2) and (3) at all reasonable times. These rights may not be limited or restricted.

(f) Any imposed limitation or restriction on the client's freedom to exercise his/her rights as specified in G.S. 122C-62(b)(1), (2), (3) and (4) or G.S. 122C-62(d)(1), (2) and (3) by the responsible professional shall be documented in accordance with G.S. 122C-62(e).

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0302 PERSONAL CLOTHING

(a) All clients have the right to retain and wear their own clothes as specified in G.S. 122-55.2(b)(5) and 122-14(b)(3) 122C-62(b)(6)

and G.S. 122C-62(d)(6) except when such clothes are determined to be inappropriate to the treatment regimen by the ~~treatment team~~ responsible professional, and the reason for that determination is documented in the ~~client's treatment plan~~ accordance with G.S. 122C-62(e).

(b) The state facility director has an obligation to supply an adequate allowance of clothing to clients whom the state facility deems indigent and who cannot provide their own clothing. Such clothing shall be seasonable, of proper size, of the character worn by the client's peers in the community, and in good condition.

(c) Personal clothing left by discharged clients shall be held for a 30-day period, during which time ~~every~~ efforts shall be made to contact the client. If the clothing is not claimed by the client within 30 days, it shall be handled in accordance with state facility policy.

(d) Clothing provided by the state facility may be kept by the client upon discharge from the state facility, at the state facility director's discretion.

(e) The state facility director shall make provision for the laundering of client clothing.

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0303 PERSONAL POSSESSIONS

(a) ~~All adult clients have the right to keep and use a reasonable amount of their own personal possessions except when the possessions are determined to be dangerous or otherwise inappropriate to the treatment regimen by the treatment team and the reason for the determination documented in the client's treatment plan. Client access to personal possessions shall be in accordance with G.S. 122C-62(b)(6) and G.S. 122C-62(d)(6) except when the possessions are determined to be potentially dangerous articles or otherwise inappropriate to the treatment regimen by the responsible professional and the reason for the determination is documented in accordance with G.S. 122C-62(e). Each state facility may develop a policy which restricts any of the following potentially dangerous articles to ensure the safety of clients: scissors, cigarette lighters, matches, razors, mirrors, pocket knives, switch blades, or products which contain potentially abusive substances.~~

(b) ~~All minor clients have the right to keep and use a reasonable amount of their own personal possessions under appropriate supervision except when the possessions are determined to be dangerous or otherwise inappropriate to the treatment regimen by the treatment team and the~~

~~reason for the determination documented in the client's treatment plan.~~

(c) ~~(b)~~ Personal possessions deposited with the state facility for safe-keeping shall be made available to the client upon request at reasonable intervals, unless the client is ~~adjudicated an incompetent adult~~ or a minor, in which case these items shall be made available to the ~~incompetent adult client or minor or guardian or parent~~ legally responsible person upon request by the legally responsible person. These items shall be returned to the client or legally responsible person upon discharge of the client from the state facility, except as specified in Rules .0307, .0308, or .0309 of this Section.

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0304 STORAGE AND PROTECTION OF CLOTHING AND POSSESSIONS

(a) The state facility shall make ~~every~~ a concerted effort to protect the client's personal clothing and possessions from theft, damage, destruction, loss, and misplacement. This includes but is not limited to the following:

- (1) advising the client, upon admission, to deposit jewelry and other valuable articles with the state facility for safe-keeping;
- (2) providing individual locked storage space ~~accessible to the client for his/her the client's own use in accordance with G.S. 122C-62(b)(10) and G.S. 122C-62(d)(8)~~ which will hold a reasonable amount of clothing and other personal possessions. ~~and Staff assistance shall be available if the client is unable due to physical or mental inability to manipulate the locking mechanism, except when such storage space is determined to be inappropriate to the treatment regimen by the responsible professional and the reason for that determination is documented in accordance with G.S. 122C-62(e);~~
- (3) developing an inventory of each client's clothing and personal possessions upon admission and reviewing and updating it annually; and
- (4) discretely marking personal clothing items and, ~~for clients being provided long term care, discretely marking~~ clothing items provided by the state facility with the client's name. Clients who elect to launder their own clothing shall not be required to have clothing marked but shall be informed that they thereby assume the risk of possible loss.

(b) The state facility director shall establish policies and procedures for managing clothing and possessions under the state facility's exclusive control. The policy shall also outline procedures for determining loss or damage and for determining any appropriate replacement or reimbursement in accordance with the Rules in 10 NCAC 1F, Section .0400.

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0305 SOCIAL INTERACTION

The state facility shall establish policies to assure the provision of suitable opportunities for the client's social interaction with members of the same or opposite sex. ~~except where a qualified professional has limited or restricted these opportunities in writing in the client's treatment or habilitation plan.~~

Statutory Authority G.S. 122C-51; 122C-62; 131E-67; 143B-147.

.0306 CONFIDENTIALITY

State facility employees shall comply with the G.S. 122C-52 through G.S. 122C-56 and the confidentiality regulations rules codified in 10 NCAC 18D and available in the "Confidentiality Rules" division publication APSM 45-1. This document is available for inspection in each state facility or in the Publications Office of the division.

Statutory Authority G.S. 122C-52; 131E-67; 143B-10; 143B-147.

.0307 SEARCH AND SEIZURE

~~(a) The provisions of this Rule shall apply to all clients in the division's facilities except clients in alcoholic rehabilitation centers, which shall be governed by the provisions of 10 NCAC 17A .0316 through .0322.~~

~~(b)~~ (a) In keeping with 10 NCAC 14G Section .0300 which requires all state facilities to have a plan for explaining rights to both clients and staff, state facility employees, state facility staff employees shall notify the client and his legally responsible person of the policy on search and seizure including the provisions of this Rule and Rules .0308 and .0309 of this Section at the time of admission.

~~(c)~~ (b) Authorized searches by state facility employees are as follows:

- (1) State facility employees may search the client and the client's possessions at the time of the client's admission to the state facility. At the time of admission, the client

may place personal items in a storage area which is secure. The state facility employees shall record in the personal property ~~record inventory~~ the items placed in storage which shall be counter-signed by the client. ~~A copy~~ The original of the personal property ~~record inventory~~ shall be maintained by the state facility and a copy shall ~~also~~ be given to the client or his legally responsible person.

- (2) State facility employees may search a client and the client's possessions when the client is returning to the state facility from an off-campus visit or after the client has received visitors, when it is reasonable to believe a client may have items in his/her possession that are dangerous, illegal or otherwise prohibited by the state facility.

- (3) State facility employees may search a client, the client's possessions or the client's living area if the state facility employees have good, substantial and reliable cause to believe that the client has been drinking or using drugs or has dangerous stolen articles or substances. Situations justifying such a search may include, but are not necessarily limited to, the following:

- (A) When drinking, drug abuse or possession of dangerous articles or substances has been witnessed by state facility employees, reported by another client or another reliable informant, or is clearly indicated by surrounding circumstances;

- (B) When inappropriate changes in the client's behavior are observed or reported, such as slurred speech, ataxia, odor of alcohol, and disruptive behaviors, excluding expected changes due to prescribed psychotropic medication;

- (C) When a breathalyzer test or urine drug screen results in a positive reading [A breathalyzer test or drug screen will be administered by nursing staff when appropriate as indicated by the circumstances in ~~(c)~~ (b) (3) (A) and (B) of this Rule or ordered by a licensed physician.]; or

- (D) When a stolen item has been witnessed by state facility employees, reported by another client or other reliable informant or is clearly indicated by surrounding circumstances and no criminal charges are anticipated.

~~(d)~~ (c) Scope of Searches. Except as provided in Rule .0309 of this Section, the procedures outlined in this Rule and Rule .0308 of this Section are intended for internal security, to protect the state facility from civil liability, and to pro-

vide an inventory of client's personal property, and are not intended for purposes of criminal prosecution.

- (1) Searches by state facility employees shall be conducted only on the state facility premises and may include searching a client, a private or semi-private room and any surrounding area, closet, bed, chest of drawers, ceiling and personal effects of the client.
- (2) Searches by state facility employees may include state facility buildings and grounds.
- (3) Only physicians may perform body cavity searches if it is determined that there is probable cause to do so. Such a search shall be performed in the presence of a member of the nursing staff. The physician or member of the nursing staff shall be of the same sex as the client.

~~(e)~~ (d) Search Procedure

- (1) All searches shall be authorized in writing by the state facility director or ~~staff member~~ state facility employee in charge of the state facility at the time of the incident except:
 - (A) searches conducted pursuant to Subparagraphs ~~(e)~~ (b) (1) or (2) of this Rule; or
 - (B) searches performed when state facility employees have a reasonable suspicion that a client has in his/her possession a weapon or instrument making the client presently dangerous to himself/herself or others, and this danger is imminent as to render prior written authorization impracticable. ~~Such searches shall be documented immediately.~~
- (2) At least two state facility employees shall be present during a search. ~~An~~ An internal client advocate may be present during a search. ~~An~~ A state facility employee of the same sex as the client shall be present during a search.
- (3) A client affected by a proposed search, other than those specified in Subparagraph ~~(e)~~ (b) (1) and (2) of this Rule shall be notified before the search is conducted and shall be given the opportunity to be present during the search. Individual storage spaces shall only be searched when the client is present unless there is an immediate danger of personal injury. ~~Such searches shall be documented.~~
- (4) Searches conducted in accordance with this Rule shall be documented in the client record.

~~(f)~~ (e) Disposition of Seized Property

- (1) If personal property seized in a search includes fire-arms or ammunition, the state facility employees shall contact the local law enforcement agency for advice regarding disposition of the property. The state facility director shall notify the appropriate deputy director regarding disposition of the personal property.
- (2) If personal property seized in a search includes controlled substances illegally possessed (contraband), the substances shall be sent to the state facility pharmacy to be held for destruction under the supervision of the Department of Justice.
- (3) If personal property seized in a search includes any alcoholic beverages, the beverages shall be sent to the state facility director for proper disposition.
- (4) If personal property seized during a search includes prescription drugs in properly labeled containers; over-the-counter medications; dangerous items such as knives, scissors, razors, or glue; ~~and~~ grooming aids that contain alcohol; or other items prohibited by the state facility, such items may be stored and returned to the client at the time of discharge. Such stored items shall be listed on the personal property ~~record~~ inventory. A copy of the personal property ~~record~~ inventory shall ~~also~~ be given to the client or his legally responsible person.
- (5) Items belonging to the minor client or minor's ~~parent~~ legally responsible person which are seized during a search of the minor or the minor's possessions, with the exception of the items specified in ~~(f)~~ (e) (2) of this Rule, shall be given to the ~~parent~~ legally responsible person if ~~the parent~~ he or she so desires.

~~(g)~~ (f) Use of the search procedure specified in this Rule shall be subject to review by the human rights advisory committee.

Statutory Authority G.S. 90-101; 122C-58; 122C-62; 131E-67; 143B-147.

.0308 SEARCH OF UNIT/WARD

(a) The entire unit/ward or parts of the unit/ward building may be searched by state facility employees if there is good, substantial and reliable cause to believe that a threatening situation exists that may be dangerous to the client(s) and/or state facility employee(s). At the forsenic unit at Dorothea Dix Hospital, routine searches may be conducted periodically in accordance with the provisions of Paragraphs (b) through (f) of this Rule.

(b) The appropriate unit/ward director or designated supervisory staff on duty shall give written authorization (based on facts of justification and what they expect to find from the search) for a search to be conducted. Written authorization will include scope of search.

(c) Clients affected by a proposed search shall be notified at the time of search and shall be given the opportunity to be present during the search of the immediate area, unless this is not practical due to the dangerousness of the situation or because the client is not on the state facility premises. Individual locked storage spaces shall only be searched when the client is present unless there is an immediate danger of personal injury. Clients not present when a search is conducted shall be informed that a search took place when they return to their unit/ward.

(d) The search must be conducted by no less than two state facility employees. Reasonable efforts shall be made to notify a an internal client advocate prior to the search unless there exists an imminent danger which does not permit time for such notification. In all cases, a an internal client advocate shall be notified of the search.

(e) When confiscated items can be attributed to a particular client, written justification and authorization for the search shall be entered in an incident report filed with the state facility director's office. ~~and~~ The search and findings shall be documented in the client record.

(f) An inventory of confiscated items shall be made and kept on file with a copy of the inventory given to the client or his legally responsible person if ownership is determined.

Statutory Authority G.S. 122C-58; 122C-62; 131E-67; 143B-147.

.0310 CLIENT'S PERSONAL FUNDS

(a) Where the state facility has been designated as representative payee or when the client is a Medicaid recipient, provisions Paragraphs (b) through (g) of this Rule shall be interpreted in accordance with any requirements of the funding source.

(b) ~~The facility shall assure to each client the right to keep and use a reasonable sum of money in his/her personal possession as~~ In accordance with G.S. 122C-62(b)(8) and G.S. 122C-62(d)(9), the maximum amount of money clients will be allowed to have and spend will be individually determined by the treatment/habilitation team or will be determined by each unit in a state facility based upon the needs and abilities of the client population. Client requests to retain money above the maximum allowable amount shall be reviewed by the client

treatment/habilitation team and the decision shall be documented in the client record. Any imposed limitation or restriction by the responsible professional on the client's right to have and spend the sum of money determined to be reasonable shall be documented in accordance with G.S. 122C-62(e).

(c) The state facility shall develop written policies and procedures which:

- (1) ~~assure to allow~~ the client ~~the right~~ to deposit and withdraw money from a personal fund account;
- (2) regulate the receipt and distribution of funds in personal fund accounts;
- (3) provide for the receipt of deposits in personal fund accounts from friends, relatives or others and withdrawal by the client;
- (4) provide for the keeping of adequate financial records on all transactions affecting funds on deposit in personal fund accounts;
- (5) provide for the issuance of receipts to persons depositing or withdrawing funds; and
- (6) provide for a periodic accounting of personal fund accounts.

(d) Where the client, due to his/her physical or mental condition, is unable to manage his/her own funds, the legally responsible person may request that the state facility director provide for the handling of a portion of funds in the personal fund account for a personal needs allowance of the client. If the state facility director provides for the handling of these funds, proper accounting must be maintained for such monies. The funds must be kept separate from any operating funds of the state facility.

(e) The state facility may not deduct from a personal fund account any amount owed or alleged to be owed to the state facility or ~~an~~ a state facility employee or visitor to the state facility or other client of the state facility for damages done or alleged to have been done by the client to the state facility, property of the state facility, state facility employee, visitor or other client, unless the client or his legally responsible person authorizes the deduction.

(f) The state facility may not deduct from a personal fund account any amount owed or alleged to be owed to the state facility for treatment or habilitation services unless the client or legally responsible person authorizes the deduction. The state facility may develop a policy for deduction from personal fund accounts for treatment or habilitation services which provides for this authorization by the client or legally responsible person upon or subsequent to admission of the client.

(g) Competent adult clients may maintain or invest their money in other than personal fund accounts at the state facility. This shall include, but not be limited to, investment of funds in interest bearing accounts.

Statutory Authority G.S. 122C-51; 122C-58; 131E-67; 143B-147.

SUBCHAPTER 14J - TREATMENT OR HABILITATION RIGHTS

SECTION .0100 - RIGHT TO TREATMENT OR HABILITATION

.0101 APPROPRIATE EVALUATION AND TREATMENT OR HABILITATION

(a) Each client except day clients shall receive a prompt and comprehensive physical and brief mental status examination, including laboratory evaluation where appropriate, within 24 hours after admission to the state facility. Comprehensive psychological or developmental evaluations shall be performed when needed, as determined by the responsible professional and or treatment habilitation team. The type and dates of all examinations shall be documented in the client record. There must be a physical examination of the client before ordering drugs medication except in an emergency.

(b) ~~Each client has the right to receive appropriate treatment or habilitation, and to have an individual written treatment or habilitation plan as specified in G.S. 122-55.5 and 122-55.6. In addition to the treatment rights specified in G.S. 122C-57(a), all handicapped clients have a right to habilitation and rehabilitation as specified in G.S. 168-8.~~

(c) ~~Each client has the right to shall receive evaluation and treatment or habilitation in the least restrictive environment which includes: accordance with G.S. 122C-57(b), G.S. 122C-60 and G.S. 122C-61. Evaluation and treatment habilitation shall be provided in the least restrictive environment.~~

- ~~(1) freedom from unnecessary or excessive medication as specified in 10 NCAC 14F-0600; and~~
- ~~(2) freedom from physical restraint and isolation that is not absolutely necessary.~~

Statutory Authority G.S. 122C-51; 122C-57; 122C-60; 122C-61; 122C-211; 122C-221; 122C-231; 122C-241; 122C-266; 122C-285; 131E-67; 143B-147.

.0102 MEDICAL AND DENTAL CARE

(a) The state facility director shall assure access to prompt, adequate and necessary medical and

dental care and treatment to the client for physical and mental ailments and injuries and for the prevention of illness or disability as specified in G.S. 122C-61(1). "Necessary" may be determined in light of the client's length of stay and condition. Short term clients shall be apprised of other medical and dental conditions and informed of appropriate medical and dental care.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice. The medical care shall be performed under appropriate supervision of licensed physicians and the dental care shall be performed under appropriate supervision of licensed dentists.

(c) Each client shall receive physical and dental examinations at least annually.

(d) In cases of medical emergency or necessity:

- (1) if the necessary equipment or expertise is not available at the state facility, the attending physician shall arrange treatment at an appropriate medical facility;
- (2) if the client is at an unreasonable distance from his/her home facility, he or she shall be taken to a nearer appropriate hospital or clinic; and
- (3) if (d)(1) or (2) of this Rule occur, the state facility director shall assure that the legally responsible person is notified. those persons specified in G.S. 122C-206(e) are notified.

Statutory Authority G.S. 122C-57; 122C-61; 122C-206; 131E-67; 143B-147.

.0103 INDIVIDUALIZED TREATMENT OR HABILITATION PLAN

(a) ~~The individual written treatment or habilitation plan shall be formulated within 30 days after admission to the facility by qualified professionals as specified in G.S. 122-55.6, and The state facility shall provide qualified professionals to formulate and supervise the implementation of the treatment habilitation plan in accordance with G.S. 122C-57(a).~~

(b) ~~Each client has the right and shall be encouraged and helped to attend the treatment habilitation team meeting and to actively and meaningfully participate in the formulation of his her treatment or habilitation plan. The parent legally responsible person of a minor client and the guardian of an or incompetent adult client shall also have a right be encouraged to attend. The amount of participation by the client parent, or guardian and or legally responsible person shall be documented in the client record. The client's right to participate may be restricted by the treatment team and documented in the~~

record. The internal client advocate, with permission of the client or his legally responsible person, shall be allowed to attend the treatment/habilitation team meeting(s).

(c) Each client has the right to may, upon request, have an in-house review of his/her individual treatment or habilitation plan and/or to request the opinion of another person at no cost to the state.

(d) Each The client's has the right to have his/her treatment or habilitation plan shall be reviewed at least quarterly by the treatment /habilitation team.

(e) When discharge is anticipated, A discharge planning plan shall be included in the treatment plan. formulated in accordance with Rule .0106 of this Section.

(f) Upon request, a copy of the client's treatment or habilitation plan or an interpretive letter shall be furnished to the guardian legally responsible person of an incompetent adult client or and to the parent legally responsible person of a minor client except for minor clients in alcohol or drug rehabilitation programs as specified in 42 C.F.R. 2. Part 2 or when minors are receiving treatment upon their own consent in accordance with G.S. 90-21.5.

(g) The treatment /habilitation team shall inform the client of the availability of his/her treatment/habilitation plan and shall provide the competent adult client with a copy of his/her treatment/ or habilitation plan upon request by the client when filed in accordance with G.S. 122C-53(c). The treatment team shall remind the client of this right after the formulation of each treatment or habilitation plan.

(h) Any imposed limitation on the client's freedom to exercise his/her rights shall be explicitly documented in the client's individual treatment plan as specified in 10 NCAC 1411 .0102 and .0103.

Statutory Authority G.S. 122C-51; 122C-53; 122C-57; 122C-61; 122C-62; 131E-67; 143B-147.

.0104 CONSULTATION WITH PRIVATE PROFESSIONALS (REPEALED)

Statutory Authority G.S. 122C-62; 131E-67; 143B-147.

.0105 TRANSFER

The state facility director shall follow the procedures specified in 10 NCAC 14C .0106 through .0415 G.S. 122C-206 and "Transfer of Clients Between State Facilities", division publication APSM 45-1 when transferring clients. The division publication is available for inspection in

each state facility or in the Publications Office of the division.

Statutory Authority G.S. 122C-206; 131E-67; 143B-147.

.0106 DISCHARGE

(a) When a state facility discharges a client, each client except respite clients shall have a written individualized post institutional treatment or habilitation discharge plan as specified in G.S. 122-55.6. 122C-61(2) unless the client:

- (1) is receiving respite services;
- (2) escapes or breaches the conditions of a conditional release;
- (3) is unanticipatedly discharged by the court following district court hearing; or
- (4) is immediately discharged upon request of the client or legally responsible person.

(b) The post institutional treatment or habilitation discharge plan shall:

- (1) be formulated by qualified professionals;
- (2) inform the client of where and how to receive treatment or habilitation services in the community.
- (3) identify continuing treatment or habilitation needs, and address issues such as food, housing, and employment; and
- (4) be provided to the client, guardian of an incompetent client and parent of a minor client except as limited in state or federal statutes regarding confidentiality; and
- (5) (4) involve the appropriate area program, unless refused by the legally responsible person, except in those instances where the appropriate area program has been designated as a single portal area in accordance with G.S. 122-35.26 in which case the procedures described in G.S. 122-7.1, 122-8.1, 122-35.43, 122-58.13, and 122-71.1 shall apply. with consent of the client or his legally responsible person or in accordance with G.S. 122C-55(a) or G.S. 122C-63.

(c) When the client is unexpectedly discharged by the court in hearing subsequent to the initial hearing, the client's discharge plan shall contain at least the following:

- (1) address and phone number of the agency in the community where follow-up services can be provided, including name of contact person in Department of Social Services if food and housing are issues;
- (2) current medications, if applicable; and
- (3) recommendations for continued care in anticipated problem areas.

(e) (d) With the exception of the regional hospital director who shall follow the provisions of

10 NCAC 15A .0113, the state facility director in each of the other state facilities shall establish written policies and procedures to ensure that ~~every~~ reasonable efforts ~~is~~ are made to assist the client in obtaining needed services in the community upon discharge or placement. The policy shall include the designation of qualified professional staff to assist clients in establishing contact with the appropriate area program and furnishing information to the area program with the client or legally responsible person's consent or as specified in permitted by G.S. ~~122-8.1(c), (d) and (e).~~ 122C-55(a).

Statutory Authority G.S. 122C-55; 122C-61; 122C-132; 131E-67; 143B-147.

.0107 CONSENT

(a) Consents required in Sections .0200, .0300 and .0400 in this Subchapter shall be obtained in writing or verbally over the telephone.

(b) Written consent of the client or his/her legally responsible person shall be obtained whenever possible. Information which is necessary to adequately inform the client shall be documented in the client record and shall include the following:

- (1) Name of the procedure or treatment and its purpose expressed in laymen's terms;
- (2) Evidence that the benefits, risks, possible complications and possible alternative methods of treatment have been explained to the client or his/her legally responsible person;
- (3) Notification that the consent may be withdrawn at any time without reprisal;
- (4) Specific length of time for which consent is valid;
- (5) When anesthesia is indicated, permission to administer a specified type of anesthesia;
- (6) Permission to perform the procedure or treatment;
- (7) When applicable, authorization for the examination and disposal of any tissue and/or body parts that may be removed;
- (8) Signature of the client or his/her legally responsible person on written authorizations.

(c) Whenever written consent cannot be obtained in a timely manner, verbal (telephone) consent may be obtained from the legally responsible person. The legally responsible person shall be asked to sign a written authorization and return it to the state facility but the treatment or procedure may be administered in accordance with the verbal consent. Verbal consent shall be witnessed by two staff members and documented

in the client record. The client record shall also include documentation specifying the reason(s) why written consent could not be obtained.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

SECTION .0200 - PROTECTIONS REGARDING CERTAIN PROCEDURES

.0201 PROHIBITED PROCEDURES

(a) The following procedures shall not be used:

(1) contingent use of painful body contact; and

(2) substances administered to induce painful bodily reactions. This does not include Antabuse.

(b) Facility staff shall not perform any psychosurgery, including lobotomies.

(a) Each state facility shall develop policies relative to prohibited interventions. Such policies shall specify:

(1) those interventions which have been prohibited by statute or rule which shall include:

(A) any intervention which would be considered corporal punishment under G.S. 122C-59;

(B) the contingent use of painful body contact;

(C) substances administered to induce painful bodily reactions exclusive of Antabuse;

(D) electric shock (excluding medically administered electroconvulsive therapy);

(E) insulin shock; and

(F) psychosurgery.

(2) those interventions specified in this Subchapter determined by the state facility director to be unacceptable for use in the state facility.

(b) In addition to the procedures prohibited in Paragraph (a) of this Rule, the state facility director shall specify other procedures which shall be prohibited.

Statutory Authority G.S. 122C-51; 122C-57; 122C-59; 131E-67; 143B-147.

.0202 ELECTROCONVULSIVE THERAPY

(a) The treatment/habilitation team may recommend the use of electroconvulsive therapy.

(a) (b) Before electroconvulsive therapy can be utilized two licensed physicians, one of whom shall be clinically privileged to perform electroconvulsive therapy, shall approve a written plan, which includes indication of need, specific goals to be achieved, methods for measuring

treatment efficacy, and indications for discontinuation of treatment. In addition, electroconvulsive therapy shall not be administered to any client under age 18 unless, prior to the treatment, two independent psychiatric consultants with training or experience in the treatment of adolescents have examined the client, consulted with the responsible state facility psychiatrist and have written and signed reports which document concurrence with the use of such treatment. For clients under the age of 13, such reviews shall be conducted by child psychiatrists.

~~(b)~~ (c) The ~~treatment team~~ internal client advocate shall be informed ~~of~~ at the time of the decision to utilize electroconvulsive therapy whenever the client requests such notification or when minor clients or adults adjudicated incompetent object to the use of electroconvulsive therapy.

~~(c)~~ (d) Electroconvulsive therapy shall not be initiated without the prior written consent of the legally responsible person, in accordance with G.S. 122C-57(f).

~~(d)~~ (e) If the adult client is determined to be de facto incompetent by the treatment/habilitation team and is determined to need electroconvulsive therapy, legal guardianship procedures shall be initiated and consent requirements of paragraph ~~(e)~~ (d) of this Rule shall be met. ~~If an urgent need exists, provisions of G.S. 108A-106 providing emergency protective services for adults may be used.~~

~~(e)~~ (f) All electroconvulsive therapy shall be administered in accordance with generally accepted medical practice and shall be documented in the client record.

~~(f)~~ (g) The state facility director shall maintain a statistical record of the use of electroconvulsive therapy which shall include, but not be limited to, the number of treatments by client, unit or like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the division director on a monthly basis.

Statutory Authority G.S. 122C-51; 122C-56; 122C-57; 131E-67; 143B-147.

.0203 GENERAL POLICIES REGARDING INTERVENTION PROCEDURES

(a) This Rule governs the emergency use of seclusion and mechanical restraint in the regional hospitals. All other state owned and operated facilities shall comply with the provisions of Rule .0204 of this Subchapter.

(b) The use of seclusion or mechanical restraint shall be limited to those instances where there is

imminent danger of injury to self or others or danger of substantial property damage or serious disruption of the therapeutic environment which would infringe on the rights of other clients.

(c) Seclusion or mechanical restraint shall not be employed as punishment or for the convenience of staff or used in a manner that causes harm or undue physical discomfort or pain to the client.

(d) The facility director shall have written policies and procedures that govern the use of seclusion and mechanical restraint which include the following:

(1) procedures for documenting the emergency and any intervention which occurred to include, but not be limited to:

(A) the rationale for the use of restraint or seclusion which addresses the inadequacy of less restrictive intervention techniques;

(B) documentation that the client was engaging in behavior that created imminent danger of injury to self or others or danger of substantial property damage or serious disruption of the therapeutic environment to the extent that it would infringe on the rights of other clients;

(C) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;

(D) description of the seclusion or restraint procedure and the date and hour of its use; and

(E) signature and title of the employee responsible for the use of the procedures; and

(2) procedures for the notification of others to include;

(A) those to be notified as soon as possible to include:

(i) the treatment team, or its designee, after each use of seclusion or restraint;

(ii) a designee of the facility director; and

(iii) the client advocate in accordance with the provisions of 10 NCAC 48D .0325; and

(B) the parent of a minor client or guardian of an incompetent client when they have requested such notification.

(e) The following requirements shall be followed when orders are given for the use of mechanical restraint or seclusion:

(1) To ascertain that the procedure is justified, a physician shall conduct a clinical assessment of the client before writing an order for the use of restraint or seclusion.

(2) A written order from a physician shall be required for the use of restraint.

- (3) A written order from a physician shall be required for the use of seclusion for longer than one hour.
- (4) Written orders for the use of restraint or seclusion shall be time-limited not to exceed 24 hours.
- (5) The written approval of the director of clinical services and/or his or her designee shall be required when restraint or seclusion is utilized for longer than 24 hours.
- (6) Standing orders (PRN) shall not be used to authorize the use of restraint or seclusion.
- (7) Under the following conditions, restraint or seclusion may be employed without a written order from a physician:
 - (A) the written order for restraint or seclusion is given by a qualified professional who has experience and training in the proper use of the procedure for which the order is written;
 - (B) the qualified professional writing the order has observed and assessed the client before writing the order; and
 - (C) the written order of the physician who is responsible for the client's medical care is obtained within not more than eight hours after initial employment of the restraint or seclusion.
- (f) While the client is in seclusion or mechanical restraint the following precautions shall be followed:
 - (1) Periodic observation of a client in seclusion and restraint shall occur at least every 15 minutes, or more often as necessary, to assure safety of the client. Appropriate attention shall be paid to the provision of regular meals, bathing, and the use of the toilet. Such observation and attention shall be documented in the client's record.
 - (2) Provision shall be made for humane, secure and safe conditions in seclusion facilities such as adequate ventilation, light, and a room temperature consistent with the rest of the facility.
 - (3) When restraint is used in the absence of seclusion and the client may be subject to injury, a staff member shall remain present with the client continuously.
- (g) Reviews and reports on the use of seclusion and mechanical restraint shall be conducted as follows:
 - (1) All uses of restraint or seclusion shall be reported daily to the facility director or his/her designee.
 - (2) The facility director or his/her designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization.
- (3) Each facility director or his/her designee shall maintain a statistical record of the use of seclusion and restraint which shall be available on a monthly basis to the human rights committee and client advocate.
- (h) The facility director shall assure by documentation in the personnel records that prior training in the emergency use of seclusion and mechanical restraint procedures has been provided to all facility staff responsible for their use or the review of their use. Training shall be provided according to the instructions of the division.
- (4) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion or mechanical restraint at the client's request; however, the procedures in (a) through (h) of this Rule shall apply.
- (a) This Rule governs the policies and requirements regarding the use of the following interventions:
 - (1) seclusion;
 - (2) restraint;
 - (3) isolation time out;
 - (4) exclusionary time out for more than 15 minutes;
 - (5) time out for more than one hour;
 - (6) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;
 - (7) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and
 - (8) overcorrection to which the client resists.
- (b) The state facility director shall develop policies and procedures for those interventions determined to be acceptable for use in the state facility. Such policies shall include:
 - (1) procedures for ensuring that the competent adult client or legally responsible person of a minor client or incompetent adult client is informed;
 - (A) of the general types of intrusive interventions that are authorized for use by the state facility; and
 - (B) that the legally responsible person can request notification of each use of an intervention as specified in this Rule, in addition to those situations required by G.S. 122C-62;
 - (2) provisions for humane, secure and safe conditions in areas used for the intervention, such as adequate ventilation,

- light, and a room temperature consistent with the rest of the state facility;
- (3) appropriate attention paid to the need for fluid intake and the provision of regular meals, bathing, and the use of the toilet. Such attention shall be documented in the client record; and
- (4) procedures for assuring that when an intervention as specified in this Rule has been used with a client three or more times in a calendar month, the following requirements are met:
- (A) A treatment/habilitation plan shall be developed within ten working days of the third intervention. The treatment/habilitation plan shall include, but not be limited to:
- (i) indication of need;
 - (ii) specific description of problem behavior;
 - (iii) specific goals to be achieved and estimated duration of procedures;
 - (iv) specific early interventions to prevent tension from escalating to the point of loss of control whenever possible;
 - (v) specific procedure(s) to be employed;
 - (vi) specific methodology of the intervention;
 - (vii) methods for measuring treatment efficacy;
 - (viii) guidelines for discontinuation of the procedure;
 - (ix) the accompanying positive treatment or habilitation methods which shall be at least as strong as the negative aspects of the plan; and
 - (x) specific limitations on approved uses of the intervention per episode, per day and requirements for on-site assessments by the responsible professional.
- (B) In emergency situations, the treatment/habilitation team may continue to use the intervention until the planned intervention is addressed in the treatment/habilitation plan.
- (C) The treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable, and document such explanation in the client record.
- (D) Before implementation of the intervention, the treatment/habilitation team shall approve the treatment/habilitation plan.
- (E) The use of the intervention shall be reviewed at least monthly by the treatment/habilitation team and at least
- quarterly, if still in effect, by a designee of the state facility director. The designee of the state facility director may not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record.
- (F) Treatment/habilitation plans which include these interventions shall be subject to review by the human rights advisory committee in compliance with confidentiality rules as specified in 10 NCAC 14G.
- (G) Each treatment/habilitation team shall maintain a record of the use of the intervention. Such records or reports shall be available to the human rights advisory committee and internal client advocate within the constraints of 10 NCAC 18D .0215 and G.S. 122C-53(g).
- (H) The state facility director shall follow the Right to Refuse Treatment Procedures as specified in Section .0300 of this Subchapter.
- (I) The interventions specified in this Rule shall never be the sole treatment modality designed to eliminate the target behavior. The interventions are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.
- (c) Whenever the interventions as specified in this Subchapter result in the restriction of a right specified in G.S. 122C-62(b) and (d), procedures specified in G.S. 122C-62(e) shall be followed. Exception to this Rule includes the use of seclusion, restraint and isolation time out, which is regulated in Rule .0204 of this Section.
- (d) The state facility director shall assure by documentation in the personnel records that state facility employees who authorize interventions shall be privileged to do so, and state facility employees who implement interventions shall be appropriately trained in the area of such interventions, as well as alternative approaches.
- (e) The state facility director shall maintain a statistical record that reflects the frequency and duration of the individual uses of interventions specified in this Rule. This statistical record shall be made available to the human rights advisory committee and the division at least quarterly.

Statutory Authority G.S. 122C-51; 122C-53; 122C-60; 131E-67; 143B-147.

.0204 SECLUSION; RESTRAINT AND ISOLATION TIME OUT

(a) This Rule governs the emergency use of seclusion and mechanical restraint in all state-

owned and operated facilities other than regional hospitals. The regional hospitals shall comply with the provisions of Rule .0203 of this Subchapter.

(b) The use of seclusion or mechanical restraint shall be limited to those instances where there is imminent danger of injury to self or others or danger of substantial property damage.

(c) Seclusion or mechanical restraint shall not be employed as punishment or for the convenience of staff or used in a manner that causes harm or undue physical discomfort or pain to the client.

(d) If a client has had three or more emergency interventions using seclusion or mechanical restraint in a 30-day period or if a pattern of disruptive behavior has developed, the seclusion or restraint shall be considered a level III procedure and shall be subject to the provisions of Rule .0206 of this Subchapter. A treatment plan, as specified in Rule .0206, shall be developed within 10 working days of the third emergency intervention.

(e) The facility director shall have written policies and procedures that govern the use of seclusion and mechanical restraint which include the following:

- (1) procedures for documenting the emergency and any intervention which occurred to include, but not be limited to:
 - (A) the rationale for the use of restraint or seclusion which addresses the inadequacy of less restrictive intervention techniques;
 - (B) documentation that the client was engaging in behavior that created imminent danger of injury to self or others or danger of substantial property damage;
 - (C) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;
 - (D) description of the seclusion or restraint procedure and the date and hour of its use; and
 - (E) signature and title of the employee responsible for the use of the procedure; and
- (2) procedures for the notification of others to include:
 - (A) those to be notified as soon as possible after the emergency has been controlled to include:
 - (i) the treatment team, or its designee, after each use of seclusion or restraint;
 - (ii) a designee of the facility director; and
 - (iii) the client advocate in accordance with the provisions of 10 NCAC 18D .0225; and

(B) the parent of a minor client or guardian of an incompetent client when they have requested such notification.

(f) The following requirements shall be followed when orders are given for the use of mechanical restraint or seclusion:

- (1) To ascertain that the procedure is justified, a physician or a qualified professional designated by the facility director shall conduct an assessment of the client before writing an order for the use of restraint or seclusion.
- (2) A written order from a physician or a qualified professional shall be required for the use of restraint.
- (3) A written order from a physician or qualified professional shall be required for the use of seclusion for longer than one hour.
- (4) Written orders for the use of restraint or seclusion shall be time-limited not to exceed 24 hours.
- (5) The written approval of the facility director or his/her designee shall be required when restraint or seclusion is utilized for longer than 24 hours.
- (6) Standing orders shall not be used to authorize the use of restraint or seclusion.
- (g) While the client is in seclusion or mechanical restraint the following precautions shall be followed:
 - (1) Periodic observation of a client in seclusion and restraint shall occur at least every 15 minutes, or more often as necessary, to assure safety of the client. Appropriate attention shall be paid to the provision of regular meals, bathing, and the use of the toilet. Such observation and attention shall be documented in the client's record.
 - (2) Provision shall be made for humane, secure and safe conditions in seclusion facilities such as adequate ventilation, light, and a room temperature consistent with the rest of the facility.
 - (3) When restraint is used in the absence of seclusion and the client may be subject to injury, a staff member shall remain present with the client continuously.
- (h) Reviews and reports on the use of seclusion and mechanical restraint shall be conducted as follows:
 - (1) All uses of restraint or seclusion shall be reported daily to the facility director or his/her designee.
 - (2) The facility director or his/her designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization.

- (3) Each facility director or his/her designee shall maintain a statistical record of the use of seclusion and restraint which shall be available on a monthly basis to the human rights committee and client advocate.
- (i) The facility director shall assure by documentation in the personnel records that prior training in the emergency use of seclusion and mechanical restraint procedures has been provided to all facility staff responsible for their use or the review of their use. Training shall be provided according to the instructions of the division.
- (j) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion or mechanical restraint at the client's request; however, the procedures in (a) through (i) of this Rule shall apply.
- (a) This Rule delineates the procedures to be followed for seclusion, restraint and isolation time out in addition to the procedures specified in Rule .0203 of this Section.
- (b) This Rule governs the use of physical or behavioral interventions which are used to terminate a behavior or action in which a client is in imminent danger of abuse or injury to self or other persons or when substantial property damage is occurring, or which are used as a measure of therapeutic treatment. Such interventions include:
- (1) seclusion;
 - (2) restraint; and
 - (3) isolation time out.
- (c) The use of seclusion, restraint and isolation time out shall be limited to those situations specified in G.S. 122C-60, which include:
- (1) emergency interventions (planned and unplanned); and
 - (2) therapeutic treatment as specified in Rule .0205 of this Section.
- (d) If determined to be acceptable for use within the state facility, the state facility director shall establish written policies and procedures that govern the use of seclusion, restraint and isolation time out which shall include the following:
- (1) process for identifying and privileging state facility employees who are authorized to use such interventions;
 - (2) provisions that a qualified and/or responsible professional shall:
 - (A) review the use of the intervention as soon as possible but, at least, within one hour of the initiation of its use;
 - (B) verify the inadequacy of less restrictive intervention techniques; and
 - (C) document in the client record evidence of approval or disapproval of continued use.
- (3) procedures for documenting the intervention which occurred to include, but not be limited to:
- (A) the rationale for the use of the intervention which also addresses the inadequacy of less restrictive intervention techniques;
 - (B) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;
 - (C) description of the intervention and the date, time and duration of its use;
 - (D) estimated amount of additional time needed in seclusion, restraint or isolation time out; and
 - (E) signature and title of the state facility employee responsible for the use of the intervention.
- (4) procedures for the notification of others to include:
- (A) those to be notified as soon as possible but no more than 72 hours after the behavior has been controlled to include:
 - (i) the treatment/habilitation team, or its designee, after each use of the intervention;
 - (ii) a designee of the state facility director; and
 - (iii) the internal client advocate, in accordance with the provisions of G.S. 122C-53(g); and
 - (B) notification in a timely fashion of the legally responsible person of a minor client or an incompetent adult client when such notification has been requested.
- (e) Seclusion, restraint and isolation time out shall not be employed as punishment or for the convenience of staff or used in a manner that causes harm or undue physical or mental discomfort or pain to the client.
- (f) Whenever a client is in seclusion, restraint or isolation time out for more than 24 continuous hours, the client's rights, as specified in G.S. 122C-62, are restricted. The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for restriction of rights.
- (g) Whenever seclusion, restraint, or isolation time out is used more than three times in a calendar month, a pattern of behavior has developed and future emergencies can be reasonably predicted. Therefore, the dangerous behavior can no longer be considered unanticipated, and emergency procedures shall be addressed as a

planned intervention in the treatment habilitation plan.

(h) In addition to the requirements in this Rule, additional safeguards as specified in Rule .0206 of this Section shall be initiated under the following conditions:

(1) Whenever a client exceeds spending 40 hours, or more than one episode of 24 or more continuous hours of his/her time in emergency seclusion, restraint or isolation time out during a calendar month; or

(2) Whenever seclusion, restraint or isolation time out is used as a measure of therapeutic treatment as specified in G.S. 122C-60 and is limited to specific planned behavioral interventions designed for the extinction of dangerous, aggressive or undesirable behaviors.

(i) The written approval of the state facility director and or his or her designee shall be required when seclusion, restraint or isolation time out is utilized for longer than 24 continuous hours.

(j) Standing orders or PRN orders shall not be used to authorize the use of seclusion, restraint or isolation time out.

(k) The client shall be removed from seclusion, restraint, or isolation time out when he/she no longer demonstrates the dangerous behavior which precipitated the emergency situation. In no case shall the client remain in seclusion, restraint or isolation time out longer than an hour after gaining behavioral control unless the client is asleep during regularly scheduled sleeping hours. If the client is unable to gain self-control within the time frame specified in the authorization, a new authorization must be obtained.

(l) Whenever seclusion, restraint or isolation time out is used on an emergency basis prior to inclusion in the treatment habilitation plan, the following procedures shall be followed:

(1) A state facility employee authorized to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.

(2) A qualified professional who has experience and training in the use of seclusion, restraint, or isolation time out and who has been privileged to employ such interventions may authorize the continued use of such interventions for up to one hour from the time of initial employment of the intervention. If a qualified professional is not immediately available to conduct an assessment of the client, but after discussion with the state facility employee, concurs that the intervention is justified for longer than 15 minutes, he/she shall verbally authorize the continuation of the

intervention for up to one hour. The qualified professional shall observe and assess the client within one hour after authorizing the continued use of the intervention. If the intervention needs to be continued for longer than one hour, the professional responsible for the client's treatment/habilitation plan shall be consulted.

(3) The responsible professional shall authorize the continued use of seclusion, restraint, or isolation time out for periods over one hour. If the responsible professional is not immediately available to conduct a clinical assessment of the client, but after discussion with the qualified professional, concurs that the intervention is justified for longer than one hour, he/she may verbally authorize the continuation of the intervention until an onsite assessment of the client can be made. The responsible professional shall conduct an assessment of the client and write such authorization within 12 hours from the time of initial employment of the intervention.

(m) While the client is in seclusion, restraint or isolation time out, the following precautions shall be followed:

(1) Whenever a client is in seclusion or restraint, periodic observation of the client shall occur at least every 15 minutes, or more often as necessary, to assure the safety of the client. Appropriate attention shall be paid to the provision of regular meals, bathing, and the use of the toilet. Such observation and attention shall be documented in the client record.

(2) Whenever a client is in isolation time-out, there shall be a state facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time out. There shall be continuous observation and verbal interaction with the client when appropriate to prevent tension from escalating. Such observation shall be documented in the client record.

(3) When restraint is used in the absence of seclusion and the client may be subject to injury, a state facility employee shall remain present with the client continuously.

(n) Reviews and reports on the use of seclusion, restraint and isolation time out shall be conducted as follows:

(1) the state facility director or his/her designee shall review all uses of seclusion, restraint and isolation time out in a timely

fashion and investigate unusual or possibly unwarranted patterns of utilization.

- (2) each state facility director shall maintain a log which includes the following information on each use of restraint, seclusion and isolation time out:

- (A) name of the client;
- (B) name of the responsible professional;
- (C) date of each intervention;
- (D) time of each intervention; and
- (E) duration of each intervention.

(o) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion, restraint or isolation time out at the client's request; however, the procedures in Paragraphs (a) through (n) of this Rule shall apply.

Statutory Authority G.S. 122C-51; 122C-53; 122C-60; 131E-67; 143B-147.

.0205 PROTECTIVE DEVICES

(a) The use of physical restraint as defined in 10 NCAC 11G .0102 (38) which is used for less than 15 continuous minutes shall be conducted in accordance with the following provisions:

- (1) Physical restraint shall not be employed as punishment or for the convenience of staff or used in a manner that causes harm or undue physical discomfort or pain to the client.
- (2) The facility director shall assure by documentation in the personnel records that prior training in the emergency use of physical restraint has been provided to all facility staff responsible for its use or the review of its use. Training shall be provided according to the instructions of the division.
- (3) The facility director shall develop written policies and procedures governing the use of physical restraint for less than 15 continuous minutes.

(b) The use of physical restraint as defined in 10 NCAC 11G .0102 (38) which is used for more than 15 minutes shall be conducted in accordance with the following provisions:

- (1) The use of physical restraint in the regional hospitals shall be limited to those instances where there is imminent danger of injury to self or others or danger of substantial property damage or serious disruption of the therapeutic environment which would infringe on the rights of other clients.
- (2) The use of physical restraint in all state-owned and operated facilities other than regional hospitals shall be limited to those instances where there is imminent danger

of injury to self or others or danger of substantial property damage.

- (3) Physical restraint shall not be employed as punishment or for the convenience of staff or used in a manner that causes harm or undue physical discomfort or pain to the client.

- (4) The facility director shall have written policies and procedures that govern the use of physical restraint which include the following:

- (A) procedures for documenting the emergency and any intervention which occurred to include, but not be limited to:

- (i) the rationale for the use of restraint which addresses the inadequacy of less restrictive intervention techniques;
- (ii) documentation that the client was engaging in behavior that created imminent danger of injury to self or others, or danger of substantial property damage, or in the case of the regional hospitals, which created danger of serious disruption of the therapeutic environment to the extent that it would infringe on the rights of other clients;
- (iii) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;
- (iv) description of the restraint procedure and the date and hour of its use; and
- (v) signature and title of the employee responsible for the use of the procedure;

- (B) procedures for the notification of others to include those to be notified as soon as possible after the emergency has been controlled to include:

- (i) the treatment team, or its designee, after each use of restraint;
- (ii) a designee of the facility director; and
- (iii) the client advocate in accordance with the provisions of 10 NCAC 18D .0325; and

- (C) procedures for the notification of the parent of a minor client or guardian of an incompetent client when they have requested such notification.

- (5) In all state-owned and operated facilities except the regional hospitals, if a client has had three or more emergency interventions using physical restraint in a 30-day period or if a pattern of disruptive behavior has developed, the restraint shall be considered a level III procedure and shall be subject to the provisions of Rule .0206 of this Subchapter. A treatment plan, as specified in Rule .0206, shall be

developed within 10 working days of the third emergency intervention.

- (6) Reviews and reports on the use of physical restraint shall be conducted as follows:

- (A) All uses of restraint shall be reported daily to the facility director or his/her designee.

- (B) The facility director or his/her designee shall review daily all uses of restraint and investigate unusual or possibly unwarranted patterns of utilization.

- (C) Each facility director or his/her designee shall maintain a statistical record of the use of restraint which shall be available on a monthly basis to the human rights committee and client advocate.

- (7) The facility director shall assure by documentation in the personnel records that prior training in the emergency use of physical restraint has been provided to all facility staff responsible for its use or the review of its use. Training shall be provided according to the instructions of the division.

(c) Nothing in this Rule shall be interpreted to prohibit the use of voluntary physical restraint at the client's request; however, the procedures in (a) and (b) of this Rule shall apply.

(a) Whenever protective devices are utilized for clients, the state facility shall:

- (1) ensure that the necessity for the protective device has been assessed and the device applied by a person who has been trained and clinically privileged in the utilization of protective devices.

- (2) frequently observe the client and provide opportunities for toileting, exercise, etc. as needed. Protective devices which limit the client's freedom of movement shall be observed at least every two hours. Whenever the client is restrained and subject to injury by another client, a state facility employee shall remain present with the client continuously. Observations and interventions shall be documented in the client record.

- (3) document the utilization of protective devices in the client's nursing care plan, when applicable, and treatment habilitation plan.

(b) In addition to the requirements specified in Paragraph (a) of this Rule, protective devices used for behavioral control shall comply with the requirements specified in Rule .0203 of this Section.

Statutory Authority G.S. 122C-51; 122C-53; 122C-60; 131E-67; 143B-147.

.0206 INTERVENTIONS REQUIRING ADDITIONAL SAFEGUARDS

(a) Level III interventions are the most intrusive level designed for the primary purpose of reducing the incidence of aggressive or self-injurious behavior to a level which will allow the use of less intrusive treatment/habilitation procedures. These interventions present a significant risk to the client and include the following procedures:

- (1) seclusion and mechanical restraint as referenced in Rule .0204 (d) of this Subchapter;
- (2) physical restraint as referenced in Rule .0205 (b)(5) of this Subchapter;
- (3) unpleasant tasting foodstuffs;
- (4) use of electric shock (excluding medically administered electroconvulsive therapy);
- (5) planned non-attention to specific undesirable behaviors when the target behavior is health threatening;
- (6) contingent deprivation of any basic necessity;
- (7) contingent application of any noxious substances which include but are not limited to noise, bad smells, or splashing with water; and
- (8) any other potentially physically painful procedure or stimulus which is administered to the client for the purpose of reducing the frequency or intensity of a behavior.

(b) A level III procedure shall never be the sole treatment modality for the elimination of target behavior. Level III procedures shall always be accompanied by positive treatment or habilitation methods which include the deliberate teaching and reinforcement of behaviors which are non-injurious; the improvement of conditions associated with non-injurious behaviors such as an enriched educational and social environment; and the alteration or elimination of environmental conditions which are reliably correlated with self-injury.

(c) Prior to the implementation of any planned use of a level III procedure the following written approvals and notifications shall be obtained and documented in the client's record:

- (1) The treatment team shall approve the plan.
- (2) Each client whose treatment plan includes level III procedures with reasonable foreseeable physical consequences shall receive an initial medical examination and periodic planned monitoring by a physician.

- (3) The treatment team shall notify the client advocate that a level III procedure has been planned for the client.
 - (4) The treatment team shall explain the level III procedure to the client and the legally responsible person, if applicable, and shall obtain the prior written consent of the legally responsible person. If the client or legally responsible person, if applicable, refuses the procedure, the facility director shall follow the right to refuse treatment procedures as specified in Rule .0302 of this Subchapter.
 - (5) The plan shall be reviewed and approved by a review committee designated by the facility director. At least one member shall be qualified through experience and training to utilize the planned procedure. No member of the review committee shall be a member of the client's treatment team.
 - (6) The treatment plan may be reviewed and approved by the facility director, at his/her option.
 - (7) The plan shall be reviewed by the human rights committee within the constraints of 10 NCAC 18D .0215 of the confidentiality regulations (division publication APSM 45-1). The committee, by majority vote, may recommend approval or disapproval of the plan to the facility director or may abstain from making a recommendation. If the facility director does not agree with the decision of the committee, the committee may appeal the issue to the division in accordance with the provisions of 10 NCAC 14G .0208.
 - (8) If any of the persons or committees specified in (c) (1); (2); (4); (5); or (6) of this Rule do not approve the continued use of a planned procedure, the planned procedure shall be terminated. The facility director shall establish an appeal mechanism for the resolution of any disagreement over the use of a level III procedure.
- (d) Level III procedures shall be used only when the treatment team has determined and documented in the record the following:
- (1) that the client is engaging in behaviors that may result in injury to self or others;
 - (2) that other methods of treatment or habilitation employing less intrusive procedures are not appropriate;
 - (3) the frequency, intensity and duration of the target behavior, and the behavior's probable antecedents and consequences; and
 - (4) it is likely that the level III procedure will enable the client to stop the target behavior.
- (e) The written treatment or habilitation plan including level III procedures shall include but not be limited to:
- (1) indication of need;
 - (2) specific goals to be achieved and estimated duration of procedures;
 - (3) exact procedures;
 - (4) methods for measuring treatment efficacy;
 - (5) guidelines for discontinuation of the procedures; and
 - (6) the accompanying positive treatment or habilitation methods.
- (f) The use of seclusion and restraint in the regional hospitals shall follow the requirements specified in Rule .0203 of this Subchapter and shall not be considered a level III procedure. In all other state-owned and operated facilities, the planned use of seclusion or restraint shall be in accordance with the provisions of this Rule.
- (g) The treatment team shall designate a staff member to maintain accurate and up-to-date written records on the application of the level III procedure and accompanying positive procedures. These records shall include at a minimum the following:
- (1) data which reflect the frequency, intensity and duration with which the targeted behavior occurs (scientific sampling procedures are acceptable);
 - (2) data which reflect the frequency, intensity and duration of the level III procedure and any accompanying positive procedures; and
 - (3) data which reflect the staff persons who administered the level III procedures.
- (h) The use of level III procedures shall be reviewed at least weekly by the treatment team or its designee and at least monthly by the director of clinical services or a designee of the facility director. The designee of the facility director shall not be a member of the client's treatment team. Reviews shall be documented in the record.
- (i) During the use of the level III procedure, the human rights committee shall be given the opportunity to review the treatment plan within the constraints of 10 NCAC 18D .0215 of the confidentiality regulations.
- (j) Each treatment team shall maintain a record of the use of level III procedures which shall be available at least quarterly to the human rights committee and client advocate within the constraints of 10 NCAC 18D .0215 and .0325 of the confidentiality regulations.
- (k) The facility director shall assure by documentation in the personnel records that prior

training in the use of level III procedures is provided to all staff responsible for their use or the review of their use.

(a) The interventions specified in this Rule present a significant risk to the client and therefore require additional safeguards. These procedures shall be followed in addition to the procedures specified in Rule .0203 of this Section.

(b) The following interventions are designed for the primary purpose of reducing the incidence of aggressive, dangerous or self injurious behavior to a level which will allow the use of less intrusive treatment/habilitation procedures. Such interventions include the use of:

- (1) seclusion, restraint or isolation time out employed as a measure of therapeutic treatment;
- (2) seclusion, restraint, isolation time out used on an emergency basis more than 40 hours in a calendar month or more than one episode of 24 hours;
- (3) unpleasant tasting foodstuffs;
- (4) planned non-attention to specific undesirable behaviors when the target behavior is health threatening;
- (5) contingent deprivation of any basic necessity;
- (6) contingent application of any noxious substances which include but are not limited to noise, bad smells, or splashing with water; and
- (7) any potentially physically painful procedure or stimulus which is administered to the client for the purpose of reducing the frequency or intensity of a behavior.

(c) Such interventions shall never be the sole treatment modality for the elimination of target behavior. The intervention shall always be accompanied by positive treatment or habilitation methods which include the deliberate teaching and reinforcement of behaviors which are non-injurious; the improvement of conditions associated with non-injurious behaviors such as an enriched educational and social environment; and the alteration or elimination of environmental conditions which are reliably correlated with self-injury.

(d) Prior to the implementation of any planned use of the intervention the following written approvals and notifications shall be obtained and documented in the client record:

- (1) The treatment/habilitation team shall approve the plan.
- (2) Each client whose treatment/habilitation plan includes interventions with reasonably foreseeable physical consequences shall receive an initial medical examina-

tion and periodic planned monitoring by a physician.

- (3) The treatment/habilitation team shall inform the internal client advocate that the intervention has been planned for the client and the rationale for utilization of the intervention.
- (4) The treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable. The prior written consent of the client or his legally responsible person shall be obtained except for those situations specified in Rule .0204(h)(1) in this Section. If the client or legally responsible person, if applicable, refuses the intervention, the state facility director shall follow the right to refuse treatment procedures as specified in this Subchapter.
- (5) The plan shall be reviewed and approved by a review committee designated by the state facility director. At least one member of the review committee shall be qualified through experience and training to utilize the planned intervention. No member of the review committee shall be a member of the client's treatment team.
- (6) The treatment/habilitation plan may be reviewed and approved by the state facility director, at his/her option.
- (7) If any of the persons or committees specified in Subparagraphs (d)(1), (2), (4), (5), or (6) of this Rule do not approve the continued use of a planned intervention, the planned intervention shall be terminated. The state facility director shall establish an appeal mechanism for the resolution of any disagreement over the use of the intervention.

(e) Neither the consents nor the approvals specified in Paragraph (d) of this Rule shall be considered valid for more than six months. The treatment/habilitation team shall re-evaluate the use of the intervention and obtain the client's and legally responsible person's consent for continued use of the intervention.

(f) The plan shall be reviewed at the next meeting of the human rights advisory committee within the constraints of 10 NCAC 14G .0209. The committee, by majority vote, may recommend approval or disapproval of the plan to the state facility director or may abstain from making a recommendation. If the state facility director does not agree with the decision of the committee, the committee may appeal the issue to the division in accordance with the provisions of 10 NCAC 14G .0208.

(g) The intervention shall be used only when the treatment/habilitation team has determined and documented in the client record the following:

- (1) that the client is engaging in behaviors that are likely to result in injury to self or others;
- (2) that other methods of treatment or habilitation employing less intrusive interventions are not appropriate;
- (3) the frequency, intensity and duration of the target behavior, and the behavior's probable antecedents and consequences; and
- (4) it is likely that the intervention will enable the client to stop the target behavior.

(h) The treatment/habilitation team shall designate a state facility employee to maintain accurate and up-to-date written records on the application of the intervention and accompanying positive procedures. These records shall include at a minimum the following:

- (1) data which reflect the frequency, intensity and duration with which the targeted behavior occurs (scientific sampling procedures are acceptable);
- (2) data which reflect the frequency, intensity and duration of the intervention and any accompanying positive procedures; and
- (3) data which reflect the state facility employees who administered the interventions.

(i) The interventions shall be evaluated at least weekly by the treatment team or its designee and at least monthly by the director of clinical services or the state facility director. The designee of the state facility director or director of clinical services shall not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record.

(j) During the use of the intervention, the human rights advisory committee shall be given the opportunity to review the treatment/habilitation plan within the constraints of 10 NCAC 14G .0209.

Statutory Authority G.S. 122C-51; 122C-53; 122C-57; 122C-60; 122C-62; 131E-67; 143B-147.

.0207 SAFEGUARDS REGARDING MEDICATIONS

(a) Level II procedures may be used only in emergencies in accordance with (b) of this Rule or after the treatment team has determined that a level II procedure is appropriate and necessary and has formulated a written treatment or habilitation plan which is in compliance with the documentation and review protections specified

in (c) through (k) of this Rule. Level II procedures are interventions which may be used when a client exhibits behaviors which are not so extreme or dangerous as to require a more intrusive level III intervention but require more intensive procedures than a more routine level I intervention. Level II interventions are an intermediate level of intrusion and include, but are not limited to, deprivation of items which the client is scheduled to receive (other than basic necessities); contingent deprivation of personal possessions; regular use (more than three times per month) of exclusionary time-out (defined as the removal of the client from the activity area where the behavior occurred to an area normally inhabited by a client and which is not a separate locked room); or overcorrection which is not painful. In any case where the intervention level is in doubt between level III and level II, protections for level III should be used.

(b) If a client has had three or more emergency interventions using any of the level II procedures identified in (a) of this Rule within a 30-day period or if a pattern of disruptive behavior has developed, the procedure used shall be considered a level II procedure and shall be subject to the provisions of this Rule. A treatment plan, as specified in this Rule, shall be developed within 10 working days of the third emergency intervention.

(c) The treatment team shall formulate a written treatment or habilitation plan including level II procedures which shall include, but is not limited to:

- (1) indication of need;
- (2) specific goals to be achieved and estimated duration;
- (3) exact procedures;
- (4) methods for measuring treatment efficacy; and
- (5) guidelines for discontinuation of the procedure.

(d) The treatment team shall explain the level II procedure to the client.

(e) Before implementation of the level II procedure, the treatment team shall approve the treatment plan.

(f) The treatment team shall designate a staff member to maintain accurate and up-to-date written records of the application of the level II procedure and accompanying positive procedures.

(g) The use of the level II procedures shall be reviewed at least monthly by the treatment team or its designee and at least quarterly, if still in effect, by the director of clinical services or a designee of the facility director. The designee of the facility director may not be a member of the

client's treatment team. Reviews shall be documented in the record.

(h) Treatment plans which include level II procedures shall be subject to review by the human rights committee in compliance with confidentiality as specified in 10 NCAC 14G .0209.

(i) Each treatment team shall maintain a record of the use of level II procedures. Such records or reports shall be available to the human rights committee and client advocate in accordance with the confidentiality regulations codified in 10 NCAC 18D (division publication APSM 45-1).

(j) The facility director shall follow the right to refuse treatment procedures as specified in Rule .0302 of this Subchapter.

(k) The facility director shall assure by documentation in the personnel records that training in the use of level II procedures is provided to all staff responsible for their use or the review of their use.

(l) Level II procedures shall never be the sole treatment modality designed to eliminate the target behavior. Level II procedures are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.

(a) The state facility shall follow the Rules in 10 NCAC 14F .0600, G.S. 122C-57, and G.S. Chapter 90, Articles I, 4A and 9A when utilizing drugs or medication.

(b) The use of experimental drugs or medication shall be considered research and shall be governed by 10 NCAC 14G .0305 and .0306 and G.S. 122C-57(f).

(c) Each state facility which allows the use of neuroleptic medications shall establish the following policies and procedures relative to utilization of such medications and safeguards for prevention of tardive dyskinesia:

- (1) State facility plan for neuroleptic medication education.
- (2) Procedures for obtaining and renewing informed consent whenever neuroleptic drug therapy is administered for a period in excess of ten weeks. If the client's documented history reflects previous neuroleptic drug therapy for a period of ten weeks or more, written informed consent will be required prior to initiation of additional neuroleptic drug therapy. Whenever consent cannot be obtained, the Rules specified in Section .0400 of this Subchapter may be implemented.
- (3) Methods for minimizing the risk of tardive dyskinesia by prescribing neuroleptic medication judiciously in low doses for short intervals.

(4) Training aimed at education of state facility employees regarding indications for using neuroleptic medication, expected therapeutic effects of neuroleptic medication and common side effects including indications of tardive dyskinesia.

(5) Procedures for monitoring clients on neuroleptic medications for signs of tardive dyskinesia including the following:

- (A) designation of a standardized rating system;
- (B) frequency of client ratings whenever tardive dyskinesia is detected or when pre-existing tardive dyskinesia increases in severity;
- (C) training of designated raters in the selected methodology.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

.0208 PROTECTIONS FOR LEVEL I PROCEDURES (REPEALED)
.0209 SAFEGUARDS REGARDING MEDICATIONS (REPEALED)

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

SECTION .0300 - RIGHT TO REFUSE TREATMENT

.0301 THERAPEUTIC AND DIAGNOSTIC PROCEDURES

(a) Each client has the right to be free from surgery without consent. In addition to the treatment procedures specified in G.S. 122C-57(f), other intrusive procedures which are not routine medical diagnostic or treatment procedures shall require the express and informed written consent of the client or his/her legally responsible person prior to their initiation except in medical emergencies. Such procedures shall include but are not limited to the following:

- (1) Procedures that introduce radioactive dyes;
- (2) Hyperalimentation;
- (3) Endoscopy;
- (4) Lumbar puncture;
- (5) Prescribing and/or administration of the following drugs:
 - (A) Antabuse;
 - (B) Clonidine when used for non-FDA approved uses; and
 - (C) Depo-Provera when used for non-FDA approved uses.
- (6) Neuroleptic drug therapy following the diagnosis of tardive dyskinesia or after the symptoms of tardive dyskinesia have appeared as observed by using a standard-

ized abnormal involuntary movement rating scale.

(b) ~~Non-emergency surgery shall not be performed on a client unless the appropriate person has signed a standard surgical permission form stating that the nature and purpose of the operation or procedure, possible alternative methods of treatment, the risks involved, and the possibility of complications have been fully explained and that permission is given to administer anesthesia, perform the procedure, and examine and dispose of any tissue removed. The appropriate person to sign the permission form shall be the legally responsible person. Non-emergency surgery, and other therapeutic and diagnostic procedures as specified in Paragraph (a) of this Rule, shall not be performed on a client unless the client or his legally responsible person has been provided with sufficient information concerning the proposed procedure in order to make an educated decision about the treatment measure and has consented in writing.~~

(c) Emergency surgery may be performed on a client without ~~the standard surgical permission consent~~ as specified in (b) of this Rule only when:

- (1) immediate action is necessary to preserve the life or health of the client;
- (2) the client is unconscious or otherwise incapacitated so as to be incapable of giving consent;
- (3) in the case of a minor or incompetent adult client, the consent of ~~a the legally responsible family member or guardian person~~ cannot be obtained within the time necessitated by the nature of the medical emergency, subject to the provisions of G.S. 90-21.1 et seq.; and
- (4) the attending physician and a second physician certify in writing that the situation requires emergency surgery.

Statutory Authority G.S. 90-21.1; 90-21.13; 122C-51; 122C-57; 131E-67; 143B-147.

.0302 INTRUSIVE INTERVENTIONS

(a) ~~Level III or Level II procedures as specified in Rules .0206(a) and .0207(a) of this Subchapter shall not be administered to a voluntary client in a non-emergency situation if the legally responsible person refuses the procedure(s). When the a client or his/her legally responsible person for a voluntary client refuses treatment or habilitation utilizing interventions specified in Section .0200 of this Subchapter level III or level II procedures in a non-emergency situation, the following process shall be followed for both voluntary and involuntary clients:~~

(1) The ~~qualified~~ responsible professional shall speak to the client ~~and~~ or legally responsible person, if applicable, and attempt to explain his/her assessment of the client's condition, the reasons for recommending the intervention, level III or level II procedures, the benefits and risks, and the advantages and disadvantages of alternative courses of action. If the client or his/her legally responsible person still refuses to participate and the qualified responsible professional still believes that these procedures interventions are a necessary part of the client's treatment or habilitation plan:

(A) (a) The ~~qualified~~ responsible professional shall tell the client and the legally responsible person, if applicable, that the matter will be discussed at a meeting of the client's treatment /habilitation team;

(B) (b) If the client's condition permits, the ~~qualified~~ responsible professional shall invite the client and the legally responsible person, if applicable, to attend the meeting of the treatment /habilitation team; and

(C) (c) The ~~qualified~~ responsible professional shall suggest that the client and the legally responsible person, if applicable, discuss the matter with a person of his/her own choosing such as a relative, friend, or internal client advocate.

(2) If ~~the a~~ voluntary client or his/her legally responsible person still refuses the procedure intervention after the process in Paragraph ~~(a)~~ (1) of this Rule has been followed and if the use of the level III or level II procedure intervention is still determined to be essential to the treatment or habilitation of the voluntary client by the treatment /habilitation team and no alternative procedures are appropriate, the treatment /habilitation team shall make a determination as to whether the client meets the requirements for involuntary commitment.

(A) (a) If the client meets the requirements for involuntary commitment, as specified in G.S. Chapter 122 C, Article 5, ~~A~~, the treatment /habilitation team may make a written recommendation to the state facility director requesting the initiation of commitment proceedings.

(B) (b) If the client does not meet the requirements for involuntary commitment, as specified in G.S. Chapter 122 C, Article 5, ~~A~~, the treatment /habilitation team may make a written recommendation to the state facility director requesting the discharge of the client.

- (C) (c) The state facility director may designate a group to investigate the circumstances and to recommend appropriate action. Such a group shall include, but not be limited to, representatives from the human rights advisory committee, client advocates, and qualified professionals in supervisory positions.
- (3) Interventions as specified in Rules .0203 through .0206 of this Section shall not be administered to a voluntary client in a non-emergency situation if the client or his/her legally responsible person refuses the intervention(s).
- (b) (4) ~~When~~ If an involuntary client or his her legally responsible person, if applicable, refuses treatment or habilitation utilizing level III or level II procedures interventions specified in Rules .0203 through .0206 of this Section in a non-emergency situation, after the process in Paragraph (1) of this Rule has been followed and if the use of the intervention is still determined to be essential to the treatment or habilitation of the involuntary client by the treatment habilitation team and no alternative approaches are appropriate, the treatment habilitation team shall meet to review the involuntary client's or his her legally responsible person's response and assess the need for the intervention as follows: the following process shall be followed:
- (1) The qualified professional shall speak to the client and attempt to explain his/her assessment of the client's condition, the reasons for recommending the level III or level II procedures, the benefits and risks, and the advantages and disadvantages of alternative courses of action. If the client still refuses to participate and the qualified professional still believes that these procedures are a necessary part of the client's treatment or habilitation plan:
- (A) The qualified professional shall tell the client that the matter will be discussed at a meeting of the client's treatment team;
- (B) If the client's condition permits, the qualified professional shall invite the client to attend the meeting of the treatment team; and
- (C) The qualified professional shall suggest that the client discuss the matter with a person of his/her own choosing such as a relative, friend, guardian or client advocate.
- (2) The treatment team shall meet to review the involuntary client's response and assess the need for level III or level II procedures as follows:
- (A) (a) If the client or legally responsible person is present, the treatment /habilitation team shall attempt to formulate a treatment or habilitation plan that is acceptable to both the client or legally responsible person and the treatment /habilitation team. The client or legally responsible person may agree to participate in the treatment or habilitation program unconditionally or under certain conditions that are acceptable to the treatment /habilitation team.
- (B) (b) If the client or legally responsible person is not present, the treatment /habilitation team shall review its previous recommendations and the client's response and shall document their decision in the client record.
- (3) (5) If, after reassessing the need for these procedures, the interventions, the treatment /habilitation team still believes that the procedures are a necessary part of the involuntary client's treatment or habilitation plan and the client or his/her legally responsible person, if applicable, still refuses, the director of clinical services or designee of the facility director client's treating physician and another physician, who may be the clinical director or his/her designee, shall interview the client and review the record. If the director of clinical services or the designee of the facility director agrees with the treatment team, the procedures both physicians determine that the intervention is essential, in accordance with G.S. 122C-57(e), the intervention may be administered as part of the competent client's documented individualized treatment or habilitation plan. If the client is incompetent or a minor, the qualified professional shall attempt to secure the consent of the legally responsible person. If the client's guardian or parent, after reasonable notice of the proposed action and a request for consent, refuses or neglects to submit in writing either the grant or denial of consent, the director of clinical services or designee of the facility director may approve the administration of the level III or level II procedures. This decision shall be documented in the client record.
- (6) The treating physician shall document the decision relative to the utilization of the intervention in the client record. Such documentation shall also include consideration of negative effects related to the specific treatment habilitation measure.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

**SECTION .0400 - REFUSAL OF
PSYCHOTROPIC MEDICATION**

**.0401 ADMINISTRATION OF MEDICATIONS
IN AN EMERGENCY**

(a) For the purposes of the rules in this Section, "emergency" means a situation in which a client is in imminent danger of causing physical harm to self or other persons unless there is rapid intervention by the ~~staff~~ state facility employee in the form of the administration of psychotropic medication.

(b) When a client in a state facility refuses psychotropic medication in a situation that constitutes an emergency, the director of clinical services ~~as defined in 10 NCAC 14G .0102(11)~~, may authorize administration of the psychotropic medication upon written certification that psychotropic medication is essential in order to prevent the client from causing imminent physical harm to self or other persons.

(c) If it is impossible to comply with the procedure in (b) of this Rule without jeopardizing the life of the client or other persons, the medication may be administered upon a physician's written or verbal order.

(d) In any situation falling within (b) or (c) of this Rule, the physician authorizing the psychotropic medication shall immediately document the authorization with such documentation including a statement describing the circumstances making the medication necessary and setting forth the reasons why lesser intrusive alternative measures would not have been adequate.

(e) Within 24 hours, or when imminent danger has passed or upon expiration of the physician's order, whichever comes first, the use of psychotropic medication shall be re-evaluated by the physician. Continuation of the administration of psychotropic medication in an emergency after the re-evaluation by the physician shall be permitted for up to 48 hours after written approval by the clinical director. If the emergency no longer exists then the procedures specified in Rules .0403 and .0404 of this Section shall apply.

(f) The occurrence of three emergency episodes within a 30-day period where psychotropic medications are administered shall constitute the need for the treatment team to review the treatment/habilitation plan. The treatment team shall develop a plan to respond to future crisis situations.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

.0402 BEST INTEREST TEST

(a) The ~~facility staff~~ responsible professional shall document in the client record that the administration of psychotropic medication against the client's will is in the best interest of the client. "Psychotropic medication administration is in the best interest of the client" means that:

- (1) the client presents an imminent physical threat to himself, other clients, or ~~staff~~ state facility employee (Behavior constituting such threat shall be explicitly documented in the client record.);
- (2) the client is incapable without medication of participating in any treatment plan available at the state facility that will give him/her a realistic opportunity of improving his/her condition; or
- (3) although it is possible to devise a treatment plan without psychotropic medication which will give the client a realistic opportunity of improving his/her condition, ~~either:~~
 - (A) a treatment plan which includes psychotropic medication would probably improve the client's condition within a significantly shorter time period; or
 - (B) there is a significant possibility that the client will harm himself or others before improvement of his/her condition is realized if medication is not administered.

(b) In addition, the following factors shall be considered when determining if psychotropic medication administration is in the best interest of the client, and the responsible professional shall document such considerations in the client record:

- (1) the client's reason for refusing medication;
- (2) the existence of any less intrusive treatments; and
- (3) the risks involved and severity of side effects associated with administration of the proposed medication.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

**.0403 REFUSAL IN STATE FACILITIES
OTHER THAN MR CENTERS**

(a) This Rule applies to all state facilities ~~as defined in 10 NCAC 14G .0102~~ with the exception of mental retardation centers. Mental retardation centers shall comply with Rule .0404 of this Section.

(b) In the case of an emergency, procedures specified in Rule .0401 of this Section shall apply.

(c) In the case of a client's refusal of psychotropic medication in a non-emergency, the best interest test as specified in Rule .0402 of this Section shall apply in the absence of a valid order requiring the administration of psychotropic medication issued from a court of competent jurisdiction.

(d) Administration to Involuntary ~~Incompetent~~ Clients.

(1) When an involuntary client ~~who has been adjudicated incompetent or a minor who has been committed or~~ his/her legally responsible person refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:

(~~1~~) (~~A~~) If a client refuses to take the psychotropic medication that has been prescribed for ~~his/her~~, The attending physician shall speak to the client or legally responsible person, if applicable, and attempt to explain his/her assessment of the client's condition, ~~his/her~~ the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action. If the client or his/her legally responsible person still refuses and the physician still believes that psychotropic medication administration is in the best interest of the client as specified in Rule .0402 of this Section:

(~~A~~) (i) the physician shall tell the client and the legally responsible person, if applicable, that the matter will be discussed at a meeting of the client's treatment team;

(~~B~~) (ii) if the client's clinical condition permits, the physician shall invite the client and the legally responsible person, if applicable, to attend the meeting of the treatment team; and

(~~C~~) (iii) the physician shall suggest that the client and the legally responsible person, if applicable, discuss the matter with a person of his/her own choosing, such as a relative, friend, guardian or client advocate.

(~~2~~) (~~B~~) The treatment team shall meet to review the client's or legally responsible person's response and assess the need for psychotropic medication.

(~~A~~) (i) If the client or legally responsible person is present, the treatment team shall attempt to formulate a treatment or habilitation plan that is acceptable to

both the client or legally responsible person and the treatment team. The client or legally responsible person may agree to take medication unconditionally or under certain conditions that are acceptable to the treatment team.

(~~B~~) (ii) If the client or legally responsible person is not present, the treatment team shall review its previous recommendations and the client's response and shall document their decision in the client record.

(~~3~~) (~~C~~) If, after assessing the need, the treatment team still believes that psychotropic medication administration is in the best interest of the client as specified in Rule .0402 of this Section and the client or legally responsible person still refuses to take administration the prescribed medication, the director of clinical services ~~or his/her physician designee who is not a member of the client's treatment team shall interview the client and review the record. If the director of clinical services or his/her physician designee who is not a member of the client's treatment team agrees with the treatment team, the prescribing physician shall attempt to secure the consent of the guardian. At that time the risks, benefits, and disadvantages shall be described in detail. If the client's guardian, after reasonable notice of the proposed action and a request for consent, refuses or neglects to submit in writing either the grant or denial of consent, the director of clinical services or his/her physician designee who is not a member of the client's treatment team may approve the administration of the medication over the objection of the client.~~ the director of clinical services or his/her physician designee, who is not a member of the client's treatment team, may approve the administration of the medication over the objection of the client and legally responsible person.

(2) Such refusal shall be documented in the client record.

(e) Administration to Voluntary Clients.

(1) When a voluntary client in a state facility refuses psychotropic medication in a non-emergency situation, ~~that is not an emergency~~, the medication shall not be administered to:

(~~1~~) (~~A~~) a competent ~~voluntary adult~~ client without the client's consent;

(~~2~~) (~~B~~) an incompetent adult client ~~who has been adjudicated incompetent~~ without the

guardian's consent or of the legally responsible person; or

~~(3) (C) a minor client without the consent of the guardian or parent, legally responsible person.~~

~~(2) Such refusal shall be documented in the client record.~~

~~(f) Administration to Involuntary Competent Clients. When an involuntary client who has not been adjudicated incompetent refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:~~

~~(1) If the client refuses to take the psychotropic medication that has been prescribed for him/her, the attending physician shall speak to the client and attempt to explain his/her assessment of the client's condition, reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action. If the client still refuses to take the medication and the physician still believes that psychotropic medication administration is in the best interest of the client as specified in Rule .0402 of this Section:~~

~~(A) the physician shall tell the client that the matter will be discussed at a meeting of the client's treatment team;~~

~~(B) if the client's clinical condition permits, the physician shall invite the client to attend the meeting of the treatment team; and~~

~~(C) the physician shall suggest that the client discuss the matter with a person of his/her own choosing, such as a relative, friend or client advocate.~~

~~(2) The treatment team shall meet to review the client's response and assess the need for psychotropic medication as follows:~~

~~(A) If the client is present, the treatment team shall attempt to formulate a treatment or habilitation plan that is acceptable to both the client and the treatment team. The client may agree to take medication unconditionally or under certain conditions that are acceptable to the treatment team.~~

~~(B) If the client is not present, the treatment team shall review its previous recommendations and the client's response and shall document their decision in the client record.~~

~~(3) If, after assessing the need, the treatment team still believes that psychotropic medication administration is in the best~~

~~interest of the client as specified in Rule .0402 of this Section and the client still refuses to take the prescribed medication, then the director of clinical services or his/her physician designee who is not a member of the client's treatment team shall interview the client and review the record. If the director of clinical services or his/her physician designee who is not a member of the client's treatment team agrees with the necessity for medication, the medication may be administered as part of the client's documented individualized treatment or habilitation plan over the objection of the client.~~

~~(g) (f) Independent Psychiatric Evaluation.~~

~~(1) Whenever the director of clinical services is asked to review a psychotropic medication decision, the director of clinical services may retain an independent psychiatric consultant to evaluate the client's need for psychotropic medication. The use of psychiatric consultant may be particularly indicated in cases where there is a disagreement between the prescribing physician and other members of the treatment team.~~

~~(2) If the client is evaluated by an independent psychiatric consultant, the director of clinical services shall file a report in the client record indicating:~~

~~(A) the recommendation of the consultant; and~~

~~(B) why the director of clinical services made a decision to follow, or not to follow, the consultant's recommendation.~~

~~(h) (g) Case Review by the Director of Clinical Services.~~

~~(1) The director of clinical services or his/her physician designee shall review each week the treatment or habilitation program of each client who is refusing to accept psychotropic medication administration voluntarily to determine:~~

~~(A) whether the client is still receiving the prescribed medication;~~

~~(B) whether psychotropic medication is still in the best interest of the client as specified in Rule .0402 of this Section; and~~

~~(C) whether the other components of the client's treatment or habilitation plan are being implemented.~~

~~(2) The director of clinical services (not his/her designee) shall review quarterly the treatment or habilitation program of each client who is refusing to accept psychotropic medication administration voluntarily to determine:~~

- (A) whether the client is still receiving the prescribed medication;
- (B) whether psychotropic medication is still in the best interest of the client as defined in Rule .0402 of this Section; and
- (C) whether the other components of the client's treatment or habilitation plan are being implemented.

(h) Documentation.

(1) Each step of the procedures outlined in Paragraphs (d) through (h) of this Rule shall be documented in the client record.

(2) Whenever the client or his/her legally responsible person has refused the administration of psychotropic medication and later agrees to such administration, the documentation of consent, either verbal or written, shall be included in the client record.

(i) A client's willingness to accept medications administered by mouth in lieu of accepting medications administered by an intramuscular route does not necessarily constitute consent. The responsible professional shall ensure that the client is indeed willing to accept the medication and is not responding to coercion.

(j) Statistical Record. The state facility director shall maintain a statistical record of the use of psychotropic medication against the client's will which shall include, but not be limited to, the number of administrations by client, unit of like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the division director and human rights advisory committee on a monthly basis.

Statutory Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

.0404 REFUSAL IN REGIONAL MENTAL RETARDATION CENTERS

(a) This Rule applies to mental retardation centers, ~~as defined in 40 NCAC 11G .0102.~~ All other state facilities shall comply with Rule .0403 of this Section.

(b) In the case of an emergency, procedures specified in Rule .0401 of this Section shall apply.

(c) In the case of a client's refusal of psychotropic medication in a non-emergency, the best interest test as specified in Rule .0402 of this Section shall apply.

(d) Medication Refusal Incident Defined

(1) A medication refusal incident is defined as any behavior on the part of the client, be it verbal or non-verbal, or legally responsible person, which is judged to be an attempt to communicate an unwilling-

ness to have psychotropic medication administered to the client.

(2) Given the characteristics of the mentally retarded population, some very commonplace acts that may not necessarily constitute refusal should be considered. These may include:

(A) passivity or the lack of active participation in various activities which may require physical prompting such as hand over hand manipulation in order to learn a particular skill or complete a particular task;

(B) spitting out medication because of objectionable texture or taste (Therefore, disguising the texture or taste of psychotropic medication with a pleasant tasting vehicle such as applesauce or pudding may not necessarily be considered administration against the client's will.); or

(C) tantrums, self-injurious behavior, aggressive acts, etc. which would not automatically be judged to represent a client's attempt to refuse medication. However, it is recognized these behaviors in some cases may indeed be the only form of communication a client may have with which to express his or her refusal.

(e) Administration of Medication in Non-Emergency Situations. When a minor or adult client or ~~their parent or guardian~~ his/her legally responsible person refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:

(1) If a ~~staff member~~ state facility employee suspects that a client may be attempting to refuse psychotropic medication, the ~~staff member~~ state facility employee shall notify the client's qualified mental retardation professional (QMRP) and the client's internal advocate.

(2) If the QMRP agrees that the client may be attempting to refuse psychotropic medication the QMRP shall notify the client's internal advocate and shall assemble the client's treatment team, including the treating physician, to assess the refusal incident.

(A) In the case of a client who is suspected of refusing, the team shall make a decision as to whether the client's behaviors, be they verbal or non-verbal, are true indications of refusal. In those instances where behavior is determined not to be refusal, authorization for the continued administration of the psychotropic medication may be given.

- (B) In those cases where behaviors are judged to be refusal or when refusal originates with the competent adult client or with the client's parent or guardian, legally responsible person, the client when possible or appropriate and the legally responsible person shall be invited to meet with the team to resolve the issue.
- (C) The physician shall explain the reasons for prescribing the medication, the benefits and risks of taking the medication and the advantages and disadvantages of alternate courses of action. The team shall make every effort to develop a habilitation plan or specific form of treatment that would be agreeable to the client and/or his/her parents or guardian, legally responsible person and still be consistent with the treatment needs of the client.
- (3) In those cases where an agreement cannot be reached between the treatment team, including the physician, and the legally responsible person, and the team, including the physician, still feels that psychotropic medication administration is in the best interest of the client, the issue shall be referred to the institution review committee appointed by the state facility director.
- (A) The composition of this committee should include a complement of professionals, including the medical director (or his/her designated physician) and human rights committee representatives. The internal client advocate shall be invited to represent the client's interest but not be considered a member of the institution review committee. The committee should not include personnel state facility employees providing direct services to the client refusing the psychotropic medication. In any event, the confidentiality regulations as codified in 10 NCAC 18D shall be followed.
- (B) As with the treatment team, the institution review committee shall involve the client and the legally responsible person where appropriate in an attempt to arrive at a mutually acceptable solution.
- (C) If agreement is reached between the legally responsible person and the institution review committee, no further proceedings are necessary. If agreement cannot be reached the institution review committee shall forward its recommendations concerning any changes in treatment or support of existing treatment methods to the center director.

- (4) If the center director receives recommendations concerning any changes in treatment or support of existing treatment methods regarding a specific client who has refused psychotropic medications and this recommendation is still unacceptable to the legally responsible person, the center director shall have, as the last alternative, the authority to discharge the client under G.S. ~~422-71.4~~, 122C-57(d). In those cases where the center director makes the decision to discharge the client, information shall be provided to the legally responsible person regarding the grievance procedures as specified in 10 NCAC 14H .0203, .0204, and .0205.

(f) Documentation. Each step of the procedure outlined in (d) through (e) of this Rule shall be documented in the client's record.

(g) Statistical Record. The state facility director shall maintain a statistical record of the use of psychotropic medication against the client's will which shall include, but not be limited to, the number of administrations by client, unit of like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the division director and human rights advisory committee on a monthly basis.

Statutory Authority G.S. 122C-51; 122C-57; 122C-242; 143B-147.

SUBCHAPTER 14K - CORE LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES: AND SUBSTANCE ABUSE FACILITIES

SECTION .0200 - LICENSURE

.0219 DEEMED STATUS

(a) If an inpatient psychiatric facility or inpatient substance abuse treatment facility is surveyed and accredited by the Joint Commission for the Accreditation of Healthcare Organizations, the commission deems the facility to be in compliance with applicable rules codified in 10 NCAC 14K through 14O with the exception of the following rules: 10 NCAC 14K .0101 through .0103; 14K .0201 through .0208(a)(3); 14K .0208(a)(5) through .0212; 14K .0213(b) through .0219; 14K .0311; 14K .0327; 14K .0330 through .0332; 14K .0342; 14K .0355; 14K .0401 through .0404 and, for inpatient substance abuse treatment services only, 14N .0103(c).

(b) Deemed status may be provided only if the facility shall agree to provide to DFS copies of the following documents:

- (1) JCAHO statement of construction and fire protection (as submitted to JCAHO by the accredited facility);
 - (2) JCAHO reports and recommendations;
 - (3) JCAHO focused survey reports;
 - (4) Accredited facility progress reports which have been sent to the facility by JCAHO; and
 - (5) Permission to participate in any regular survey conducted by the JCAHO.
- (c) Any facility licensed under the provisions of the rules contained in 10 NCAC 14K through 14O shall, however, continue to be subject to inspection by the secretary.

Statutory Authority G.S. 122C-22; 122C-26; 143B-147.

CHAPTER 15 - MENTAL HEALTH HOSPITALS

SUBCHAPTER 15A - GENERAL RULES FOR HOSPITALS

SECTION .0200 - VOLUNTARY ADMISSIONS: INVOLUNTARY COMMITMENTS AND DISCHARGES OF MINORS TO AND FROM REGIONAL PSYCHIATRIC HOSPITALS

.0204 PURPOSE

The rules in this Section specify procedures for voluntary admissions, involuntary commitments, and discharges of minors to and from the regional psychiatric hospitals. These rules also specify the responsibilities of area programs and hospitals for coordinating the admission, treatment and discharge of minors. These rules do not apply to Wright School, Whitaker School or the Children's Psychiatric Unit at John Umstead Hospital.

Statutory Authority G.S. 122C-221 through 122C-223; 122C-224.7; 122C-261; 122C-262; 143B-147.

.0205 SCOPE

The rules in this Section shall be followed with regard to minors by hospital and area program staffs, and other appropriate professionals as specified in G.S. 122C-222. Area program child and youth coordinators and hospital child and youth unit directors shall develop their policies and procedures regarding inpatient referrals and discharge planning in accordance with these rules.

Statutory Authority G.S. 122C-221 through 122C-223; 122C-224.7; 122C-261; 122C-262; 143B-147.

.0206 DEFINITIONS

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

- (1) "Child and youth coordinator" means that individual charged by the area program to develop and administer mental health services for minors.
- (2) "Child and youth unit director" means that individual charged by the regional psychiatric hospital to develop and administer mental health services for minors.
- (3) "Eligible psychologist" means a licensed practicing psychologist who has at least two years clinical experience.
- (4) "Emergency involuntary commitment" means admission to a hospital when a minor has met the criteria specified in G.S. 122C-262.
- (5) "Hospital" means one of the regional psychiatric hospitals of the division. Wright School, Whitaker School and the Children's Psychiatric Unit at John Umstead are excluded from this definition.
- (6) "Legally responsible person" has the meaning specified in G.S. 122C-3(20).
- (7) "Referring agent" means the practitioner authorized to refer minor clients to a hospital. In single portal areas this is the child and youth coordinator or his designee. In non-single portal areas, this is the child and youth coordinator or his designee, a licensed physician or an eligible psychologist.
- (8) "Regional child and family coordinator" means the individual in each regional office who coordinates the development of mental health services for minors.
- (9) "Regional screening committee" means the regional committee that reviews the records of minors for the purpose of making placement recommendations to Wright School, Whitaker School, and the Children's Psychiatric Unit at John Umstead Hospital.
- (10) "Single portal area" has the meaning specified in G.S. 122C-3(35).
- (11) "Voluntary admission" means admission to a hospital for evaluation and treatment consented to by the minor's legally responsible person, or self admission in accordance with G.S. 122C-223.
- (12) "Willie M. coordinator" means that individual charged by the area program to develop and administer mental health services for Willie M. class members.

Statutory Authority G.S. 122C-3; 122C-221; 143B-147.

**.0207 WRITTEN CONSENT FOR RELEASE
OF INFORMATION**

Except as otherwise provided in G.S. 122C-53 through G.S. 122C-56, the written consent of the minor's legally responsible person shall be obtained prior to the release of confidential information.

Statutory Authority G.S. 122C-53 through 122C-56; 143B-147.

**.0208 WRITTEN APPLICATION FOR
VOLUNTARY ADMISSIONS**

(a) The minor's legally responsible person may apply in writing for the admission of the minor to a hospital with or without the consent of the minor.

(b) In an emergency situation, a minor may be voluntarily admitted upon his own written application, in accordance with the provisions of G.S. 122C-223.

Statutory Authority G.S. 122C-3; 122C-221 through 122C-223; 143B-147.

.0209 MANDATORY SCREENING

Except as provided in G.S. 122C-223 and 122C-262, all minors shall be screened in accordance with Rule .0214 of this Section prior to admission to a hospital.

Statutory Authority G.S. 122C-221 through 122C-223; 122C-262; 143B-147.

**.0210 TELEPHONE NOTIFICATION OF
HOSPITAL BY REFERRING AGENT**

(a) During working hours, the referring agent shall telephone the child and youth unit director or his designee regarding an imminent admission or commitment.

(b) After working hours, the referring agent shall telephone the hospital admission staff regarding an imminent admission or commitment. Immediately upon receiving such telephone notification, the hospital admissions staff shall notify the designated representative of the child and youth unit director.

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

**.0211 REFERRALS FROM SINGLE PORTAL
AREAS**

(a) In single portal areas, the child and youth coordinator or his designee may refer a minor directly to a hospital.

(b) In single portal areas, all professionals and agencies shall refer all prospective minor admis-

sions to the child and youth coordinator or his designee.

(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the child and youth coordinator or his designee as specified in this Rule.

Statutory Authority G.S. 122C-221; 122C-223; 122C-261; 122C-262; 143B-147.

**.0212 REFERRALS FROM NON-SINGLE
PORTAL AREAS**

(a) In non-single portal areas, licensed physicians, eligible psychologists or the child and youth coordinator or his designee may refer a minor directly to a hospital.

(b) In non-single portal areas, all professionals and agencies other than licensed physicians and eligible psychologists shall refer all prospective minor admissions to the persons listed in Paragraph (a) of this Rule.

(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the appropriate persons or agencies as specified in this Rule.

Statutory Authority G.S. 122C-222; 122C-223; 122C-261; 122C-262; 143B-147.

**.0213 USE OF STANDARDIZED REFERRAL
FORM**

All referrals shall be in writing on the standardized referral form in duplicate. One copy of the form shall be filed at the area program and one copy shall be sent to the hospital.

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

.0214 SCREENING BY REFERRING AGENT

(a) As part of the referral process for hospital admission, except admissions under G.S. 122C-223 and 122C-262, the appropriate referring agent as specified in Rules .0211(a) and .0212(a) in this Section shall determine that:

- (1) there is the presence or probably presence of mental illness; and
- (2) less restrictive treatment measures are likely to be ineffective. In making this judgment, the referring agent shall determine that:
 - (A) outpatient treatment or less intensive residential treatment measures would not alleviate the mental illness;
 - (B) there is no local inpatient unit that meets the needs of the minor; and

(C) the minor's primary need is not foster care, group child care or correctional placement.

(b) Additionally, the referring agent shall provide the following written information, to the extent possible:

- (1) name of the professional at the area program or other setting who has provided diagnostic or treatment services to the client;
- (2) full name of client, including maiden name, if applicable;
- (3) legal county of residence;
- (4) birthdate;
- (5) previous admissions to any state facility;
- (6) name, address and telephone number of the legally responsible person or, if there is no legally responsible person, the minor's next of kin;
- (7) any medical problems, including pertinent laboratory data and treatment;
- (8) current psychiatric and other medications;
- (9) history of compliance with medications and after care instructions;
- (10) alternatives attempted or considered prior to referral to hospital;
- (11) goal of hospitalization specifying the treatment problem(s) that the hospital should address;
- (12) specific suggestions for programming and other treatment planning recommendations; and
- (13) release plans to include the information relevant to placement and other special considerations of the client upon discharge from the hospital.

(c) The written information shall accompany the minor to the hospital.

Statutory Authority G.S. 122C-221 through 122C-223; 122C-261; 122C-262; 143B-147.

.0215 WRITTEN AGREEMENTS/NON-SINGLE PORTAL AREAS

(a) In a non-single portal area, when a licensed physician or eligible psychologist who is not affiliated with the area program makes a referral of a minor for hospital admission, he shall be asked by the hospital unit to sign a written agreement which promises the following:

- (1) continued involvement with the child family during hospital treatment;
- (2) participation in identification and coordination of community services that are essential to discharge planning; and
- (3) provision of aftercare, as needed, following discharge.

(b) The purpose of this written agreement is to assure that appropriate planning for treatment, discharge and aftercare will occur.

(c) If the referring agent does not sign the agreement described in Paragraph (a) of this Rule, the hospital staff shall consult with the minor's legally responsible person to determine his choice of a practitioner to participate in discharge and aftercare planning. The designated person shall thereafter be called the referring agent.

- (1) If the legally responsible person names a practitioner, the hospital staff shall obtain the legally responsible person's written consent to contact the practitioner chosen in order to request the practitioner's participation in discharge and aftercare planning.
- (2) If the legally responsible person does not know of a practitioner, the hospital staff shall suggest the child and youth coordinator in the area program in the catchment area where the minor resides. The hospital staff shall obtain the legally responsible person's written consent to contact the child and youth coordinator and shall request the child and youth coordinator's participation in discharge and aftercare planning.
- (3) If the legally responsible person does not know of a practitioner and declines to choose the child and youth coordinator, the hospital staff may suggest other practitioners. If the legally responsible person selects a practitioner other than the child and youth coordinator, the hospital staff shall proceed as described in Subparagraph (c)(1) of this Rule.
- (4) If the legally responsible person refuses to permit the involvement of any practitioner in discharge and aftercare planning or refuses to sign the written consent described in Subparagraph (c)(1) or (c)(2) of this Rule, and in the opinion of the responsible professional, such refusal would be detrimental to the minor, the responsible professional shall so state in writing, and thereafter, the hospital staff shall so advise the child and youth coordinator in the area program in the catchment area where the minor resides.

Statutory Authority G.S. 122C-222; 122C-261; 143B-147.

.0216 INFORMATION FOR TREATMENT PLANNING

(a) The referring agent shall send the following client information, if available, to the appropriate hospital admissions office within three working days following the minor's admission or commitment to the hospital. This information shall include but not be limited to the following:

- (1) family history, current composition, current functioning, and motivation for treatment;
- (2) child/youth's developmental history, highest level of functioning in the past, and current level of functioning;
- (3) relationship with family, peers and others;
- (4) personality characteristics and degree of emotional and/or organic impairment;
- (5) how, and, under what circumstances, the impairment is most manifest;
- (6) intellectual level, past and current;
- (7) educational-academic functioning, and school history;
- (8) strengths, individual and family;
- (9) long range planning; and
- (10) goals for hospitalization.

(b) The information required in Paragraph (a) of this Rule shall be used by hospital staff in developing the treatment plan.

Statutory Authority G.S. 122C-55(a); 143B-147.

.0217 NOTIFICATION BY HOSPITAL OF ADMISSION/DENIAL

(a) The child and youth unit director shall notify the referring agent within 24 hours regarding the following:

- (1) the decision to admit the minor and the admission date; or
- (2) the decision to deny admission of the minor, including the reasons for the denial and any recommendations for treatment alternatives.

(b) In those instances where the individual has not been referred by an area program, the hospital shall notify the referring agent and the appropriate area program in a timely manner regarding the hospital's decision to admit or deny admission to the individual.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0218 SHARING OF INFORMATION WITH REFERRING AGENT

(a) During the formulation of the minor's treatment plan, the child and youth unit director shall share the following information with the referring agent:

- (1) goals for hospitalization;
- (2) anticipated length of stay;

- (3) expectations regarding family involvement;
- (4) expectations regarding area program and other community agency involvement;
- (5) dates of hospital diagnostic/treatment conference; and
- (6) dates of discharge planning conference.

The information in Paragraphs (5) and (6) in this Rule should be provided as early as possible to allow for referring agent participation.

(b) The child and youth unit director shall notify the referring agent concerning any significant changes in the minor's treatment plan.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0219 ONGOING INFORMATION PROVIDED BY REFERRING AGENT

During the minor's hospitalization, the referring agent shall keep the child and youth unit director informed regarding the following:

- (1) availability of appropriate community resources;
- (2) relevant information pertaining to community's/family's change in circumstances;
- (3) ability of other agencies to participate with treatment; and
- (4) relevant educational material to aid hospital in educational planning as provided by the school system.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0220 FAILURE OF AREA PROGRAM TO PARTICIPATE IN PLANNING

If the referring agent is the area program, and the area program fails to participate in planning for the treatment, discharge and aftercare of the minor, the child and youth unit director shall notify the child and youth coordinator. If appropriate area program participation does not occur after such notification, the child and youth unit director shall notify the area director, and then, if necessary, the regional child and family coordinator.

Statutory Authority G.S. 122C-221; 143B-147.

.0221 EMERGENCY INVOLUNTARY COMMITMENT

(a) Any minor who meets criteria for inpatient commitment pursuant to G.S. 122C-262 shall be admitted to the child and youth unit whether or not the minor has been screened by a referring agent.

(b) In those instances where the minor has been committed without screening by a referring

agent, the hospital shall notify, within one working day, the area program in the catchment area where the minor resides of the emergency commitment.

Statutory Authority G.S. 122C-262; 143B-147.

**.0222 EMERGENCY ADMISSION/
COMMITMENTS AND BED
AVAILABILITY**

(a) When a minor has been admitted to a hospital in accordance with Rule .0208(b) of this Section and no bed is available in the child and youth unit, the hospital and the area program in the catchment area where the minor resides shall make every effort to locate an alternate placement. If no other placement is available, the child shall be admitted to the hospital and placed in the most appropriate available bed.

(b) When a minor has been committed to a hospital in accordance with Rule .0221 of this Section and no bed is available in the child and youth unit, the hospital and either the referring agent, if the minor has been screened, or the area program in the catchment area where the minor resides, if the minor has not been screened, shall make every effort to locate an alternative placement. If no other placement is available the child shall be admitted to the hospital and placed in the most appropriate available bed.

Statutory Authority G.S. 122C-223; 122C-262; 143B-147.

**.0223 CASE MANAGEMENT FOR
UNSCREENED EMERGENCY
COMMITMENTS**

(a) In those instances where the minor has not been screened by a referring agent prior to emergency commitment to a hospital, the area program in the catchment area where the minor resides shall appoint a case manager for the minor within two working days of receipt of notification of the commitment.

(b) The case manager shall promptly communicate with the child and youth unit director or his designee to arrange a comprehensive treatment planning conference. The case manager shall also communicate with the hospital child and youth unit director or his designee regarding discharge planning.

Statutory Authority G.S. 122C-262; 143B-147.

.0224 DISCHARGE OF MINOR

(a) The child and youth unit director shall discharge a minor from treatment when it is determined that the minor is no longer mentally ill or no longer in need of treatment at the hospital.

(b) The minor's legally responsible person may file a written request for discharge from the hospital as specified in G.S. 122C-224.7.

(c) The child and youth unit director shall notify the referring agent and the legally responsible person as soon as a decision to release the minor from the hospital is made.

Statutory Authority G.S. 122C-224.7; 143B-147.

.0225 DISCHARGE PLANNING

Discharge planning shall occur for each minor admitted or committed to the hospital.

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

**.0226 PARTICIPANTS IN DISCHARGE
PLANNING**

(a) The hospital shall consult with the referring agent to determine who will participate in discharge planning.

(b) In those instances where there is no referring agent, the case manager appointed pursuant to Rule .0223 of this Section shall be consulted to determine who will participate.

(c) If the hospital does not request the referring agent's participation in discharge planning, the referring agent shall notify the child and youth unit director.

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

**.0227 DISCHARGE PLANNING AND WRITTEN
PLAN**

(a) A conference shall be held to formulate a discharge plan for each minor. The planning shall include, but not be limited to, the following:

- (1) a review of the minor's presenting problems, social circumstances and relevant case history;
- (2) a discussion of follow-up treatment alternatives based on realistic community alternatives; and
- (3) the assignment of responsibility(ies) for implementation of the discharge plan.

(b) A written discharge plan shall be developed based on the results of the conference. Copies of the plan shall be distributed to relevant parties.

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

**.0228 DISCHARGE PLAN IMPLEMENTATION
FOR AREA PROGRAM REFERRALS**

(a) When a minor referred by an area program is discharged, the minor's case manager shall be

responsible for supervising the implementation of the minor's discharge plan.

(b) The following staff shall be available to assist the minor's case manager in implementing the minor's discharge plans:

- (1) area program child and youth coordinator;
- (2) child and youth staff;
- (3) other appropriate area program staff;
- (4) area program Willie M. coordinator; and
- (5) regional screening committee.

Statutory Authority G.S. 122C-221; 122C-224.7; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18I - GENERAL REQUIREMENTS

SECTION .0100 - PURPOSE: SCOPE: APPLICABILITY AND DEFINITIONS

.0115 DEEMED STATUS

A component that is surveyed and certified by a nationally recognized accreditation body whose standards the commission accepts in lieu of its own shall be considered to be in compliance with applicable standards codified in 10 NCAC 18I through 18Q. However, the division may review such components as it deems necessary to carry out its responsibilities for assuring compliance with other commission and division rules and regulations.

(a) If an inpatient psychiatric service or inpatient substance abuse treatment service operated by an area program is surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations, the commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18L .0108, 18L .0224, 18L .0429, 18L .0431 and, for inpatient substance abuse treatment services only, 14N .0103(c). Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the division.

(b) If an inpatient psychiatric service or inpatient substance abuse treatment service is provided on a contractual basis with an area program is surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations, the commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18K .0263; 18L .0108, 18L .0224, 18L

.0429, and, for inpatient substance abuse treatment services only, 14N .0103(c). Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the division.

(c) If a residential service for persons with mental retardation or other developmental disabilities operated by an area program is certified as an Intermediate Care Facility for the Mentally Retarded (ICF/MR) by the North Carolina Division of Facility Services for the Health Care Financing Administration of the United States Department of Health and Human Services, the commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18L .0108, 18L .0224, 18L .0429 and 18L .0431. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the division.

(d) If a residential service for persons with mental retardation or other developmental disabilities is provided on a contractual basis and is certified as an Intermediate Care Facility for the Mentally Retarded (ICF/MR) by the North Carolina Division of Facility Services for the Health Care Financing Administration of the United States Department of Health and Human Services, the commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18K .0263; 18L .0108, 18L .0224, 18L .0429, and 18L .0431. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the division.

(e) Deemed status may be provided only if the program shall agree to provide to the Division of Mental Health, Mental Retardation and Substance Abuse Services copies of the following documents:

- (1) JCAHO statement of construction and fire protection (as submitted to JCAHO by the accredited program);
- (2) JCAHO reports and recommendations;
- (3) JCAHO focused survey reports;
- (4) Accredited program progress reports which have been sent to the program by JCAHO; and
- (5) Permission to participate in any regular survey conducted by the JCAHO.

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18J - AREA PROGRAM
MANAGEMENT STANDARDS

SECTION .0700 - QUALITY ASSURANCE

.0709 CROSS-REFERENCE TO CLINICAL
SUPERVISION OF SUBSTANCE ABUSE
STAFF

(a) For those services not subject to licensure under G.S. 122C, Article 2, clinical supervision of substance abuse staff shall be implemented according to the provisions of 10 NCAC 14K .0319 (b) (3), (4) and (5).

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0319 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0712 CROSS-REFERENCE TO EMPLOYEE
EDUCATION AND TRAINING

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0307.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0307 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18L - PROGRAM COMPONENT
OPERATIONAL STANDARDS

SECTION .0300 - FACILITIES MANAGEMENT

.0333 CROSS-REFERENCE TO INDOOR
LIVING SPACE

Each residential and respite facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0325 (1), (3), (4) and (8).

Statutory Authority G.S. 143B-147.

.0334 CROSS-REFERENCE TO OUTDOOR
ACTIVITY SPACE/EQUIPMENT

Each facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0326.

Statutory Authority G.S. 143B-147.

.0338 CROSS-REFERENCE TO PHYSICAL
EXAMS/MEDICAL PROCEDURES

Components not subject to licensure under G.S. 122C, Article 2 performing physical examinations or medical procedures shall comply with provisions of 10 NCAC 14K .0340.

Statutory Authority G.S. 143B-147.

SECTION .0400 - CLIENT RIGHTS

.0429 CROSS-REFERENCE TO COMPLIANCE
WITH STATUTES

In addition to G.S. 122C, each component not subject to licensure under G.S. 122C, Article 2 shall implement its services in such a manner as to ensure the rights accorded all clients as required by the following:

- (1) G.S. 131D-19 through 131D-24 (~~Domiciliary~~ Domiciliary Home Residents' Bill of Rights);
- (2) G.S. 108A-99 through 108A-111 (The Protection of the Abused, Neglected or Exploited Disabled Adult Act);
- (3) G.S. 7A-542 through 7A-552 (Screening of Abuse and Neglect for Juveniles); and
- (4) G.S. 130A-143 through 130A-148 (Communicable Diseases and Conditions).

Statutory Authority G.S. 7A-542 through 7A-552; 108A-99 through 108A-111; 115C-Article 9; 122C-51 through 122C-62; 130A-143 through 130A-148; 131D-19 through 131D-24; 143B-147.

.0432 CROSS-REFERENCE TO CLIENT
GRIEVANCE POLICY

The governing body of each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0328.

Statutory Authority G.S. 143B-147.

SECTION .0600 - CLIENT ELIGIBILITY

.0604 CROSS-REFERENCE TO CLIENT FEE
FOR SERVICE

The governing body of each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0309.

Statutory Authority G.S. 122C-146; 143B-147.

SECTION .0700 - TREATMENT/HABILITATION
PROCESS

.0702 CROSS-REFERENCE TO ADMISSION

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0313.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0313 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0703 CROSS-REFERENCE TO ASSESSMENT

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0314.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0314 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0705 CROSS-REFERENCE TO INDIVIDUAL TREATMENT/PROGRAM PLAN

(a) Each program component not subject to licensure under G.S. 122C, Article 2 which provides active treatment/habilitation shall comply with the provisions of 10 NCAC 14K .0315.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0315 shall be interpreted to mean "program component".

Statutory Authority G.S. 122C-51; 143B-147.

.0706 CROSS-REFERENCE TO DISCHARGE/ AFTERCARE

(a) At discharge, each program component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0316.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0316 shall be interpreted to mean "program component".

Statutory Authority G.S. 143B-147.

.0707 CROSS-REFERENCE TO SERVICE COORDINATION

(a) Each program component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0318.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0318 shall be interpreted to mean "program component".

Statutory Authority G.S. 143B-147.

SECTION .0800 - HEALTH PRACTICES

.0804 CROSS-REFERENCE TO MEDICAL EMERGENCIES

~~Each~~ The governing body of each component not subject to licensure when G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0335.

Statutory Authority G.S. 143B-147.

.0805 CROSS-REFERENCE TO EMERGENCY INFORMATION

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0336.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0336 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0806 CROSS-REFERENCE TO EMERGENCY CARE PERMISSION

(a) Upon the client's admission, each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0337.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0337 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0807 CROSS-REFERENCE TO STAFF TRAINING FOR MEDICAL EMERGENCIES

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0338.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0338 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0808 CROSS-REFERENCE TO RESPONSIBILITY FOR WATER SAFETY

(a) Each component not subject to licensure under G.S. 122C, Article 2 which includes water activities in its schedule shall comply with the provisions of 10 NCAC 14K .0343.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0343 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.0809 CROSS-REFERENCE TO FIRST AID SUPPLIES

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0341.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0341 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

SECTION .0900 - CLINICAL SERVICES

.0903 CROSS REFERENCE TO SPECIALIZED

THERAPIES

Specialized therapies provided by programs not subject to licensure under G.S. 122C, Article 2 shall be implemented according to the provisions of 10 NCAC 14K .0334.

Statutory Authority G.S. 143B-147.

.0904 CROSS-REFERENCE TO TESTING SERVICES

Testing services provided by programs not subject to licensure under G.S. 122C, Article 2 shall be implemented according to the provisions of 10 NCAC 14K .0345.

Statutory Authority G.S. 143B-147.

SECTION .1000 - MEDICAL SERVICES

.1002 CROSS-REFERENCE TO PHYSICIAN RESPONSIBLE/MEDICAL SERVICES

Each component not subject to licensure under G.S. 122C, Article 2 providing medical services shall comply with the provisions of 10 NCAC 14K .0339.

Statutory Authority G.S. 143B-147.

.1004 CROSS-REFERENCE TO LABORATORY POLICIES AND PROCEDURES

(a) The governing body of each component not subject to licensure under G.S. 122C, Article 2 which orders laboratory tests shall comply with the provisions of 10 NCAC 14K .0346.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0346 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.1005 CROSS-REFERENCE TO LABORATORY ACCREDITATION

Each component not subject to licensure under G.S. 122C, Article 2 which orders laboratory tests shall comply with the provisions of 10 NCAC 14K .0347.

Statutory Authority G.S. 143B-147.

.1006 CROSS-REFERENCE TO DOCUMENTATION OF LABORATORY TESTS

(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0348.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0348 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

SECTION .1100 - MEDICATION SERVICES

.1102 CROSS-REFERENCE TO PRESCRIBING OF MEDICATION

(a) Individuals prescribing medication in programs not licensed under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0349.

(b) For purposes of the rules of this Section, the term "facilities" in 10 NCAC 14K .0349 shall be interpreted to mean "services".

Statutory Authority G.S. 143B-147.

.1103 CROSS-REFERENCE TO DISPENSING OF MEDICATION

Individuals dispensing medication in programs not licensed under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0350.

Statutory Authority G.S. 90-18.1; 90-18.2; 90-68; 90-85.2; 143B-147.

.1104 CROSS-REFERENCE TO ADMINISTRATION OF MEDICATION

(a) In programs not subject to licensure under G.S. 122C, Article 2, medication shall be administered according to the provisions of 10 NCAC 14K .0351.

(b) For purposes of the rules of this Section, the term "facilities" in 10 NCAC 14K .0351 shall be interpreted to mean "programs".

Statutory Authority G.S. 90-21.5; 90-171.20(7),(8); 90-177.44; 143B-147.

.1105 CROSS-REFERENCE TO STORAGE OF MEDICATION

In programs not subject to licensure under G.S. 122C, Article 2, all medication shall be stored according to the provisions of 10 NCAC 14K .0352.

Statutory Authority G.S. 143B-147.

.1106 CROSS-REFERENCE TO DISPOSAL OF MEDICATION

(a) In programs not subject to licensure under G.S. 122C, Article 2, medication shall be disposed of according to the provisions of 10 NCAC 14K .0353.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0353 shall be interpreted to mean "program".

Authority G.S. 143B-147; 21 C.F.R. 1307.21.

.1107 CROSS-REFERENCE TO MEDICATION EDUCATION

Programs not subject to licensure under G.S. 122C, Article 2 providing medication for clients shall provide medication education according to the provisions of 10 NCAC 14K .0354.

Statutory Authority G.S. 143B-147.

SECTION .1200 - NUTRITION/DIETARY PRACTICES

.1203 CROSS-REFERENCE TO NUTRITION REQUIREMENTS

(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving meals for clients shall comply with the nutrition requirements delineated in 10 NCAC 14K .0356.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0356 shall be interpreted to mean "program component".

Statutory Authority G.S. 130A-361; 143B-147.

.1204 CROSS-REFERENCE TO MODIFIED DIETS

(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving meals for clients shall comply with the requirements for modified diets delineated in 10 NCAC 14K .0357.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0357 shall be interpreted to mean "program component".

Statutory Authority G.S. 130A-361; 143B-147.

.1205 CROSS-REFERENCE TO STAFFING FOR FOOD SERVICE

(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving more than one meal daily shall comply with the requirements for staffing for food service and maintenance delineated in 10 NCAC 14K .0358.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0358 shall be interpreted to mean "program component".

Statutory Authority G.S. 143B-147.

.1206 CROSS-REFERENCE TO FOOD SERVICE EQUIPMENT AND SPACE

(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving more than one meal daily shall comply with the requirements for food service equipment and space delineated in 10 NCAC 14K .0359.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0359 shall be interpreted to mean "program component".

Statutory Authority G.S. 143B-147.

SECTION .1300 - TRANSPORTATION SERVICES

.1302 CROSS-REFERENCE TO TRANSPORTATION POLICY

(a) The governing body of each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for clients shall comply with the requirements regarding transportation policy delineated in 10 NCAC 14K .0361.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0361 shall be interpreted to mean "component".

Statutory Authority G.S. 143B-147.

.1303 CROSS-REFERENCE TO LICENSED DRIVER

Each driver in the transportation service in program components not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0362.

Statutory Authority G.S. 143B-147.

.1304 CROSS-REFERENCE TO SAFETY PRECAUTIONS

Each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for clients shall comply with the requirements for seat belts and secure storage delineated in 10 NCAC 14K .0363.

Statutory Authority G.S. 143B-147.

.1305 CROSS-REFERENCE TO TRANSPORTATION OF MINORS

Each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for minor clients shall comply with the provisions of 10 NCAC 14K .0364.

Statutory Authority G.S. 143B-147.

SECTION .1400 - RESEARCH PRACTICES

.1402 CROSS-REFERENCE TO RESEARCH REVIEW BOARD

(a) Each component not subject to licensure under G.S. 122C, Article 2 which involves area program clients in research activities shall comply with the requirements relating to research review boards delineated in 10 NCAC 14K .0333.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0333 shall be interpreted to mean "component".

Statutory Authority G.S. 122C-52; 143B-147.

.1403 CROSS-REFERENCE TO SUBJECT PARTICIPATION

Each component not subject to licensure under G.S. 122C, Article 2 which involves area program clients in research activities shall comply with the requirements for subject participation delineated in 10 NCAC 14K .0334.

Statutory Authority G.S. 122C-52; 143B-147.

SUBCHAPTER 18Q - OPTIONAL SERVICES FOR INDIVIDUALS WHO ARE MENTALLY RETARDED

SECTION .0200 - BEFORE/AFTER SCHOOL AND SUMMER DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0284 CROSS-REFERENCE TO INTRODUCTION

Before after school and summer developmental day services not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0501.

Statutory Authority G.S. 143B-147.

.0286 CROSS-REFERENCE TO HOURS OF OPERATION

Before/after school and summer developmental day services not subject to licensure under G.S. 122C, Article 2 shall comply with the hours of operation requirements delineated in 10 NCAC 14M .0502.

Statutory Authority G.S. 143B-147.

SECTION .0500 - COMMUNITY RESPITE SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION: OTHER DEVELOPMENTAL DISABILITIES: DEVELOPMENTAL DELAYS OR AT RISK FOR THESE CONDITIONS

.0521 CROSS-REFERENCE TO POPULATION SERVED

Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0702.

Statutory Authority G.S. 143B-147.

SECTION .0700 - GROUP HOMES FOR ADULTS WHO ARE MENTALLY RETARDED

.0709 CROSS-REFERENCE TO INTRODUCTION

Each group home which is not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements set forth in 10 NCAC 14M .0301.

Statutory Authority G.S. 143B-147.

.0710 POPULATION SERVED

(a) Each group home shall be designed primarily to serve mentally retarded or otherwise developmentally disabled individuals who are at least 18 years of age and who are in need of a supervised living environment within a community setting.

(b) No group home shall designate any bed for the continuous provision of respite services.

Statutory Authority G.S. 143B-147.

.0711 HOURS OF OPERATION

Each group home shall operate 24 hours per day, seven days per week, 12 months per year unless there are times when all clients are out of the home for a period of 24 hours or more.

Statutory Authority G.S. 143B-147.

.0712 ADMISSION DECISION OF CLIENT/ LEGALLY RESPONSIBLE PERSON

The client or his legally responsible person shall make the final decision as to whether to accept the group home placement should the client be accepted for admission.

Statutory Authority G.S. 143B-147.

.0713 CROSS-REFERENCE TO MANAGING CLIENTS' FUNDS

(a) Each group home which is not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements set forth in 10 NCAC 14K .0311.

(b) Each client, when necessary, shall be provided training in money management.

Statutory Authority G.S. 143B-147.

.0714 ANNUAL INTERNAL ASSESSMENT

The group home program staff shall conduct an annual internal assessment of the program, including the degree of its compliance with the standards, and shall develop a written plan of action that addresses the correction of each identified deficiency.

Statutory Authority G.S. 143B-147.

.0715 CROSS-REFERENCE TO COMPLIANCE WITH GROUP HOME STANDARDS

Each group home, as appropriate, which is not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements set forth in 10 NCAC 14M .0303.

Statutory Authority G.S. 143B-147.

SECTION .0800 - APARTMENT LIVING PROGRAMS FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0803 CROSS-REFERENCE TO PROGRAM DIRECTOR/COORDINATOR

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall comply with the staffing requirements for program director/coordinator delineated in 10 NCAC 14O .0204.

Statutory Authority G.S. 143B-147.

.0804 CROSS-REFERENCE TO STAFF REQUIRED FOR MR/DD CLIENTS

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall comply with the staff/client ratios delineated in 10 NCAC 14O .0210.

Statutory Authority G.S. 143B-147.

.0808 CROSS-REFERENCE TO TREATMENT/HABILITATION PLAN

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements regarding the treatment/habilitation plan delineated in 10 NCAC 14O .0207.

Statutory Authority G.S. 143B-147.

.0810 CROSS-REFERENCE TO CLIENT TRAINING IN HEALTH AND SAFETY

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements regarding client training in health and safety delineated in 10 NCAC 14O .0209.

Statutory Authority G.S. 143B-147.

.0812 CROSS-REFERENCE TO MANAGING CLIENTS' FUNDS

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall comply with the requirements regarding managing clients' funds delineated

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18R - LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND ALCOHOL FACILITIES

SECTION .0200 - APPLICATION FOR LICENSE

.0205 LICENSURE SURVEYS AND ISSUANCE (REPEALED)

Statutory Authority G.S. 122C-26; 143B-147.

CHAPTER 45 - NORTH CAROLINA DRUG COMMISSION

SUBCHAPTER 45G - MANUFACTURERS; DISTRIBUTORS; DISPENSERS AND RESEARCHERS OF CONTROLLED SUBSTANCES

SECTION .0100 - REGISTRATION OF MANUFACTURERS; DISTRIBUTORS; AND DISPENSERS OF CONTROLLED SUBSTANCES

.0110 TIME FOR APPLICATION FOR REGISTRATION: EXPIRATION DATE

~~(c) All registrations shall expire on October 31. If the registrant registers within the three months preceding October 31, the registration shall not expire until the following October 31. In all other cases, the registration shall expire on the first October 31 following the date on which the person registered.~~

All registrations shall expire annually on the anniversary of their date of inception as hereafter set out. For the purposes of these registrations, the state shall be divided into a Northern, Central, and Southern Region. The counties which are included in each of these regions are specified in Paragraph (d) of this Rule. The date of expiration for each registration shall be determined by the region of the state in which the registrant is located. The registrations from the Northern Region shall expire on October 31 of each year. The registrations from the Central Region shall expire on December 31 of each year. The registrations from the Southern Region shall expire on July 31 of each year. If the registrant registers within the three months preceding the expiration date for their region, the registration which they receive shall not expire until the expiration date of the following year. However, for the registration year of 1989 all renewal registrations shall be handled in accordance with Paragraph (e) of this Rule.

(d) The counties of the State of North Carolina are divided into three regions as follows:

- (1) The Northern Region shall include the following counties: Alamance; Alleghany; Ashe; Bertie; Camden; Caswell; Chowan; Currituck; Dare; Durham; Edgecombe; Forsyth; Franklin; Gates; Granville; Guilford; Halifax; Hertford; Martin; Nash; Northampton; Orange; Pasquotank; Perquimans; Person; Rockingham; Stokes; Surry; Tyrrell; Vance; Warren; Washington; Watauga; Wilkes; and Yadkin.
- (2) The Central Region shall include the following counties: Alexander; Avery; Beaufort; Buncombe; Burke; Caldwell; Carteret; Catawba; Chatham; Cherokee; Clay; Craven; Davidson; Davie; Graham; Greene; Haywood; Hyde; Iredell; Jackson; Johnston; Jones; Lenoir; Macon; Madison; McDowell; Mitchell; Pamlico; Pitt; Randolph; Rowan; Swain; Wake; Wayne; Wilson; and Yancey.
- (3) The Southern Region shall include the following counties: Anson; Bladen; Brunswick; Cabarrus; Cleveland; Columbus; Cumberland; Duplin; Gaston; Harnett; Henderson; Hoke; Lee; Lincoln; Mecklenburg; Montgomery; Moore; New Hanover; Onslow; Pender; Polk; Richmond; Robeson; Rutherford; Sampson; Scotland; Stanley; Transylvania; and Union.
- (c) All renewal registrations applied for on October 31, 1989 shall be granted in accordance with the following specifications:
 - (1) The renewal registrations received from the Northern Region shall be granted for the period of October 31, 1989 until October 31, 1990.
 - (2) The renewal registrations received from the Central Region shall be extended until December 31, 1989 at which time they will be granted for the period of December 31, 1989 until December 31, 1990.
 - (3) The renewal registrations received from the Southern Region shall be granted for the period of October 31, 1989 until July 31, 1990.

Statutory Authority G.S. 90-100; 143B-120(9).

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources - Division of Services for the Blind intends to amend rule(s) cited as 10 NCAC 19C .0702; 19H .0106.

The proposed effective date of this action is June 1, 1989.

The public hearing will be conducted at 10:00 a.m. on March 11, 1989 at DSB Conference Room, Fisher Building, Governor Morehead Campus, 309 Ashe Avenue, Raleigh, N.C. 27606.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Herman Gruber, Designee, Division of Services for the Blind, 309 Ashe Ave., Raleigh, N.C. (919) 733-9822.

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19C - BUSINESS ENTERPRISES PROGRAM

SECTION .0700 - EARNINGS; FUNDS; AND PROCEEDS

.0702 SET-ASIDE

(b) The division will set aside no more than a total of twenty percent of the funds from the net proceeds of each stand operation to be used for the following purposes:

	Estimated Percentage
(1) maintenance and replacement of equipment;	3.91%
(2) purchase of new equipment;	4.35%
(3) management services;	7.39%
(4) assuring a fair minimum return to operators;	4.35%
(5) the operators may use part of the set-aside for the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, if it is so determined by a majority vote of blind operators licensed by the division, after the division provides to each operator information on all matters relevant to the proposed purposes.	

The percentage, to be determined in advance, will vary from facility to facility depending upon the nature and scope of the accounting services rendered by the Division of Services for the Blind to the individual facility.

Authority G.S. 111-12.5; 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107a et seq., as amended.

SUBCHAPTER 19H - MEDICAL/EYE CARE PROGRAM

SECTION .0100 - CERTIFICATION

.0106 REDETERMINATION

(a) A redetermination of eligibility is mandatory every six months because of possible changes in economic circumstances.

(b) ~~Redetermination is unnecessary within a maximum 24 month period if the client is undergoing a specific treatment regimen which is incomplete at the end of the six month period. The covered services will be limited to those in the regimen.~~

Statutory Authority G.S. 111-8; 143B-157.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to amend rule(s) cited as 10 NCAC 27 .0009; and adopt 10 NCAC 42C .2007.

The proposed effective date of this action is May 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 15, 1989 at Disability Determination Services' Building, Conference Room, 321 Chapanoke Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments either in writing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Bonnie Allred, 325 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3055.

CHAPTER 27 - CHILD SUPPORT ENFORCEMENT

.0009 HEARINGS AS MANDATED BY THE SET-OFF DEBT COLLECTION ACT

Counties adhere to the following procedures:

- (1) Within 30 days of ~~receipt of the notice~~ the date of mailing of proposed set-off action, an absent parent may request a hearing; This request shall be in writing and mailed or delivered to the address set forth in the notice;

- (2) If the county which is responsible for management of the absent parent's case is has a county-operated IV-D program, then the hearing shall be conducted by ~~the director of the local IV-D program or local designee; provided that the hearing officer shall not be that individual who was primarily responsible for handling the case in question; a hearing officer designated by the Director of the Division of Social Services;~~
- (3) If the county which is responsible for management of the absent parent's case is has a state-operated IV-D program, ~~then the hearing shall be conducted by an individual designated by the regional IV-D consultant; the Office of Administrative Hearings shall conduct the hearing and the hearing procedures specified in Chapter 150B, Article 3 and 26 NCAC Chapter 3 shall apply;~~
- (4) The hearing shall be conducted at the local IV-D agency in the county which is responsible for management of the case whenever feasible or other suitable location as designated by the hearing officer;
- (5) All hearings under this Rule and under G.S. 105A-8, the Set-Off Debt Collection Act, shall be conducted in accordance with ~~G.S. 150A,~~ G.S. 150B, Article 3, the Administrative Procedure Act, and 10 NCAC 1B .0200, or 26 NCAC Chapter 3 as appropriate.

Statutory Authority G.S. 105A-8; 110-128; 143B-153.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2007 QUALIFICATIONS OF PERSONAL CARE STAFF

(a) Each aide, administrator, and supervisor-in-charge, who provides personal care to residents in family care homes and homes for the aged and disabled, who is hired after January 1, 1990 to work in a home and who does not have six months experience shall have successfully completed an aide training program approved by the Department of Human Resources, Domiciliary Home Personnel Policies Review Committee. When an individual has not already successfully completed an approved aide training program, he/she shall enroll in the first available approved aide training program which is scheduled to commence within 60 days of the date of his/her employment. The program may be es-

tablished by the home or by an organization or educational institution and taught by the administrator, supervisor-in-charge, other qualified staff, or by an organization or educational institution. The licensed home shall provide a planned orientation within the first week of employment for all personal care staff hired after January 1, 1989 emphasizing resident care policies and procedures, the home's philosophy and goals, and staff performance expectations.

(b) The aide training program shall consist of at least the following:

- (1) Twenty hours of classroom instruction to commence within 60 days of employment. The instruction shall include the individual's duties, basic personal care skills, resident safety and rights, the social and psychological aspects of aging, interaction with families, the importance of activities and social services, and death and dying. The 20 hours of classroom instruction shall be completed within the first 120 days of employment.
- (2) Forty hours of supervised training. These hours shall consist of an appropriately supervised work assignment and shall commence upon employment. The 40 hours of supervised training shall be completed within the first 120 days of employment.
- (3) Proof of successful completion of training shall be retained in the home's records, and shall be available for inspection.

Statutory Authority G.S. 131D-2; 143B-153.

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to amend rule(s) cited as 10 NCAC 35D .0301, .0304; 35E .0101, .0105, .0106; 35F .0001 - .0007; 47B .0404; adopt 10 NCAC 35E .0204; and repeal 10 NCAC 35F .0009.

The proposed effective date of this action is July 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 15, 1989 at Disability Determination Services' Building, Conference Room, 321 Chapanoke Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments either in writing or orally at the hearing. Any person may

request information, permission to be heard or copies of the proposed regulations by writing or calling Bonnie Allred, 325 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3055.

CHAPTER 35 - FAMILY SERVICES

SUBCHAPTER 35D - CONDITIONS FOR PROVISION OF SERVICES

SECTION .0300 - ELIGIBILITY DETERMINATION AND REDETERMINATION

.0301 ELIGIBILITY DETERMINATION

(a) An eligibility determination means a decision pursuant to an application for social services which is based on an assessment of certified and, if required, verified information necessary to determine whether an individual meets the conditions of eligibility for the service(s) requested. Conditions of eligibility include basic eligibility criteria applicable to the program or funding source under which the service is made available and ~~service specific eligibility criteria, if any, applicable to the conditions of need specified in the target population for the service requested, as set forth in 10 NCAC 35 through 37 and 10 NCAC 41 through 42.~~ Procedures for applying eligibility criteria in order to reach an eligibility decision are set forth in the Family Services Manual, as described in 10 NCAC 35A .0003.

Statutory Authority G.S. 143B-153.

.0304 REDETERMINATION OF ELIGIBILITY

(a) In order to provide Child Day Care services or the federally funded abortion resource item of Health Support services, eligibility must be redetermined on a routine basis of at least every 12 months or when required on the basis of new information provided to the agency about actual changes in the client's circumstances that affect his eligibility.

(b) Notwithstanding Paragraph (a) of this Rule, eligibility for services provided on the basis of need and without regard to income or under the Child Welfare Act is based on need and, as provided in the Act, services shall continue until determined no longer appropriate.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35E - SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0100 - CONDITIONS OF ELIGIBILITY

.0101 BASIC ELIGIBILITY CRITERIA

In addition to the requirements of 10 NCAC 35D .0300, in order for an individual to be determined eligible to receive services funded under the Social Services Block Grant (Title XX), it must be established that he is eligible

- (1) ~~on the basis of income maintenance status;~~
- (2) ~~on the basis of income eligible status, within the maximum income levels for particular services; or~~
- (3) ~~for some services, on the basis of need without regard to income.~~

on the basis of need as specified in the target population for the service(s) requested as set forth in 10 NCAC 35 through 37 and 10 NCAC 41 through 42 except that for purposes of providing child day care services or the federally funded abortion and sterilization resource items of Health Support Services, eligibility must also be determined on the basis of his income maintenance or income eligible status.

Statutory Authority G.S. 143B-153.

.0105 MAXIMUM INCOME LEVELS FOR SERVICES

(a) Sixty Percent of Established Income. An individual whose gross monthly family income is less than 60 percent of the state's established income for a family of that size may be eligible for any service child day care services or federally funded abortion and sterilization resource items of health support services funded under the Social Services Block Grant (Title XX) that is available in the county in which he lives.

(b) Eighty Percent of Established Income. An individual whose gross monthly family income is as much as 60 percent but less than 80 percent of the state's established income for a family of that size may be eligible for any of the following services service or resource items if available in the county in which he lives:

- (1) ~~community living services; child day care services; and~~
- (2) ~~day care services for adults; federally funded abortion and sterilization resource items of health support services.~~
- (3) ~~delinquency prevention services-residential care;~~
- (4) ~~health support services-resource items;~~
- (5) ~~housing and home improvement services;~~
- (6) ~~in-home services: chore services;~~
- (7) ~~in-home services: homemaker services;~~
- (8) ~~personal and family counseling;~~
- (9) ~~preparation and delivery of meals;~~
- (10) ~~residential treatment for the emotionally disturbed.~~

(c) One Hundred Percent of Established Income. An individual whose gross monthly fam-

ily income is as much as 80 percent but does not exceed 100 percent of the state's established income for a family of that size may be eligible for any of the following services child day care services if it is available in the county in which he lives.

- (1) ~~day care services for adults;~~
- (2) ~~in-home services: chore services;~~
- (3) ~~in-home services: homemaker services;~~
- (4) ~~preparation and delivery of meals.~~

Statutory Authority G.S. 143B-153(2a)b.

.0106 WITHOUT REGARD TO INCOME STATUS

(a) Individuals may be determined eligible for the following services on the basis of need for the service and without regard to their income:

- (1) adoption services;
- (2) foster care services for adults;
- (3) foster care services for children;
- (4) protective services for adults;
- (5) protective services for children;
- (6) any service child day care services and federally funded abortion and sterilization resource items of health support services funded under the Social Services Block Grant (Title XX) that is are needed in conjunction with protective services may be provided without regard to income during the first 12 months that protective services is provided if such service is available in the county in which the individual lives and the agency has received a referral/report pursuant to G.S. 7A-543 or G.S. 108A, Article 6, has initiated protective services in accordance with program policies, and has determined that such other services are needed to support the provision of protective services;
- (7) delinquency prevention (excluding (including residential care);
- (8) employment and training support services (excluding (including transportation and resource items);
- (9) health support services (excluding transportation and resource items); (including transportation and resources for the aging, disabled or handicapped but excluding sterilization and abortion resource items);
- (10) individual and family adjustment services (excluding (including camping component);
- (11) problem pregnancy (including residential care);
- (12) community living services;
- (13) day care services for adults;
- (14) housing and home improvement services (including resource items);
- (15) in-home services: chore services;

- (16) in-home services; homemaker services;
- (17) personal and family counseling;
- (18) preparation and delivery of meals;
- (19) residential treatment for the emotionally disturbed; and
- (20) transportation services.

(b) Notwithstanding (a) of this Rule, chore services may be provided without regard to income to severely physically disabled individuals for purposes of conducting a demonstration project in Mecklenburg County. Unless specifically exempted, all other requirements governing the provision of chore services shall be met. The purpose of the demonstration project is to promote and enhance independent living for severely physically disabled individuals through the provision of chore services. The demonstration project will be operated in accordance with procedures established by the Department of Human Resources, Division of Social Services, and the Division of Vocational Rehabilitation.

(c) Notwithstanding (a) of this Rule, and becoming effective contingent upon federal approval of the Community Linkages Program, transportation services may be provided without regard to income for a period not to exceed nine months to individuals who obtain unsubsidized employment while participating in the Community Linkages Program for purposes of conducting a demonstration project in Alamance County. The purpose of the demonstration project is to test a method of linking services available through the Alamance County Department of Social Services, the Alamance Office of the Employment Security Commission, and the Technical College of Alamance to assist recipients of Aid to Families with Dependent Children to prepare for, secure and retain unsubsidized employment. The demonstration project will be operated in accordance with procedures established under the authority of Section 1115 of the Social Security Act.

Statutory Authority G.S. 143B-153(2a)b.

SECTION .0200 - ELIGIBILITY DETERMINATION

.0204 METHOD OF DETERMINING NEED FOR SERVICES

An assessment of need shall be required for services provided on the basis of need without regard to income and funded under the Social Services Block Grant (Title XX). The determination of need shall be made in accordance with procedures set forth in the Family Services Manual, as described in 10 NCAC 35A .0003.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35F - FEES FOR SERVICES

.0001 GENERAL FEE POLICY

(a) No fees will be charged for any services provided to the following categories of individuals:

- (1) recipients of aid to families with dependent children payments;
- (2) recipients of supplemental security income benefits;
- (3) individuals whose family gross monthly income is less than 100 percent of the state's established income.

Statutory Authority G.S. 143B-153.

.0002 SERVICES FOR WHICH FEES ARE CHARGED

(a) Fees may must be charged for the following services or resource items when these services are provided to individuals whose family gross monthly income is between 60 percent and 100 percent at or above 100 percent of the state's established income for their family size:

- (1) chore services;
- (2) day care services for adults;
- (3) homemaker services;
- (4) preparation and delivery of meals;
- (5) housing and home improvement resource items;
- (6) personal and family counseling services; and
- (7) transportation services.

(b) The determination of whether fees are charged for each of the services identified in (a) of this Rule shall be made on a county by county basis. Where it is determined that fees will be charged, the income eligibility range at which fees are charged must also be designated. The locally designated income range for fees must be within the percentage levels of the state's established income prescribed in (a) of this Rule. Authority for these decisions shall rest with each county board of social services.

Statutory Authority G.S. 143B-153.

.0003 AMOUNT OF FEES

Where the county board of social services determines that fees will be charged for certain fee services, The amount of the fees charged for those services shall be in accordance with the fee schedules adopted by the Social Services Commission and published by the Division of Social Services. Copies of the fee schedules may be obtained from the Division of Social Services, 325 North Salisbury Street, Raleigh, North Carolina, 27611. In addition, the fee schedules are

available for public inspection during normal business hours in the division offices and in each county department of social services.

Statutory Authority G.S. 143B-153.

.0004 ADJUSTMENTS IN FEES

(b) Adjustments for Service Provided to More Than One Family Member. When a fee service is provided to more than one member, of the same family, an adjustment in the amount of fee to be charged will be made as follows:

- (1) Chore Services, ~~and~~ Homemaker Services and Personal and Family Counseling. Where chore services, ~~or~~ homemaker services or personal and family counseling is provided to more than one family member, the hourly fee for the service is divided equally among the family members receiving the service.

Statutory Authority G.S. 143B-153.

.0005 MAXIMUM FEE CHARGES

~~In order not to discourage the use of needed services, Except for transportation services and the resource items of housing and home improvement services,~~ the fee schedules adopted by the Social Services Commission provide for a maximum amount which may be charged a family in total fees during any one month. The schedule of maximum fees is adjusted according to family size and income. Maximum fee schedules are available for inspection and may be obtained in accordance with Rule .0003 of this Section.

Statutory Authority G.S. 143B-153.

.0006 MINIMUM FEE CHARGES

Fee charges will be disregarded when the total amount due is less than ~~five dollars (\$5.00)~~ ten dollars (\$10.00) per month.

Statutory Authority G.S. 143B-153.

.0007 NON-PAYMENT OF FEES

Reimbursement to the county department of social services or other provider will be terminated after a service has been provided for as long as ~~three~~ two consecutive months without full payment of the fee due for provision of that service.

Statutory Authority G.S. 143B-153.

.0009 FEES: WITHOUT REGARD TO INCOME TEST (REPEALED)

Statutory Authority G.S. 143-153.

CHAPTER 47 - STATE/COUNTY SPECIAL ASSISTANCE

SUBCHAPTER 47B - ELIGIBILITY DETERMINATION

SECTION .0400 - ELIGIBILITY FACTORS

.0404 RESERVE

(a) Eligibility Requirement.

- (1) To determine eligibility, the eligibility specialist shall count only resources that are currently available to the applicant/recipient. For applications, only those resources that are available during any month prior to disposition are counted to determine eligibility for those months. A resource shall be considered available not only when it is actually available but also when the applicant/recipient has a legal interest in a resource and can make it available.

(A) When a representative alleges that an applicant/recipient is mentally incompetent and does not have a legal representative appointed to act in his behalf, the resources held solely by the applicant/recipient or held jointly shall be excluded in determining countable reserve provided the following two conditions are met:

- (i) the petition to have an applicant/recipient declared incompetent is filed with the court within 30 calendar days from the date the applicant's/recipient's representative is informed of the requirement; and
- (ii) the petition to have a legal guardian appointed is filed with the court within 30 calendar days of the date the applicant's/recipient's representative is informed of the requirement.

(B) The county department of social services shall petition the court for incompetency and appointment of a guardian if:

- (i) the applicant/recipient has no representative willing to act in his behalf or the representative or guardian refuses to take the required action. The county shall petition the court to have the applicant/recipient declared incompetent and to have a guardian appointed within 30 calendar days from the date it learns of the representative's refusal.
- (ii) the applicant's/recipient's representative fails to take the required action within 30 calendar days of the date he

was informed of the requirement. The county shall within 15 calendar days from this date, petition the court to have the applicant/recipient declared incompetent and to have a legal guardian appointed.

If the conditions in Subparagraph (B)(i) and (ii) are met, the resources held solely by the applicant/recipient or held jointly shall be excluded in determining countable reserve.

(C) When the court rules that the applicant/recipient is competent, his resources shall be counted beginning the first day of the month following the month he is declared competent.

(D) When the court declares the applicant/recipient incompetent and appoints a guardian, the guardian must take appropriate action to dispose of or make exempt the resource within 30 calendar days of his appointment. If he does not, the county department of social services shall determine if the guardian is acting appropriately under the terms of the guardianship.

(E) If the guardian takes the appropriate action to dispose of or make exempt the resource, the resource shall be excluded until the clerk of court confirms the action taken by the guardian. The resource shall be counted in reserve beginning the first day of the month following the month the action is confirmed by the clerk of court.

Statutory Authority G.S. 108A-41; 108A-46; 143B-153.

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Natural Resources and Community Development intends to repeal rule(s) cited as 15 NCAC 1D .0101 - .0109; and adopt rule(s) cited as 15 NCAC 1D .0201 - .0202, .0301 - .0304, .0401 - .0403, .0501 - .0504, .0601 - .0604.

The proposed effective date of this action is May 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 16, 1989 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: All interested persons are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk at the hearing. Further details of the proposed repeals and adoptions may be obtained by writing or calling: Mr. Bill Flournoy, Div. of Planning and Assessment, P.O. Box 27687, Raleigh, NC 27611. Phone: (919) 733-6376.

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1D - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT

SECTION .0100 - GENERAL PROVISIONS

- .0101 PURPOSE (REPEALED)
- .0102 INCORPORATION OF STATE REGULATIONS (REPEALED)
- .0103 RESPONSIBLE STATE OFFICIAL: DELEGATION (REPEALED)
- .0104 APPLICABILITY OF ACT TO DEPARTMENT ACTIONS (REPEALED)
- .0105 EFFECT OF PROPOSED ACTION ON THE ENVIRONMENT OF THE STATE (REPEALED)
- .0106 PREPARATION AND FORM OF ENVIRONMENTAL IMPACT STATEMENT (REPEALED)
- .0107 REVIEW PROCEDURES FOR ENVIRONMENTAL IMPACT STATEMENTS (REPEALED)
- .0108 APPROVAL AND PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT (REPEALED)
- .0109 RECORD OF ACTIONS (REPEALED)

Statutory Authority G.S. 113A, Article 1; 143B-10.

SECTION .0200 - GENERAL PROVISIONS

.0201 STATEMENT OF PURPOSE: POLICY: AND SCOPE

(a) The purpose of the rules in this Subchapter is to establish procedures within the Department of Natural Resources and Community Development (NRCD) for conforming with the North Carolina Environmental Policy Act (NCEPA).

- (1) Rules for implementation of the NCEPA (1 NCAC 25) are hereby incorporated by reference to include further amendments pursuant to G.S. 150B-14(c).
- (2) The NRCD's procedures must insure that environmental documents are available to public officials and citizens before deci-

sions are made and before actions are taken. The information must be of high quality and sufficient to allow selection among alternatives.

(b) The secretary is the "responsible state official" for NRCD. The secretary may delegate responsibility for the implementation of the NCEPA to appropriate staff.

(c) The provisions of the rules in this Subchapter, the state rules (1 NCAC 25), and the NCEPA must be read together as a whole in order to comply with the spirit and letter of the law.

(d) For the purpose of this Chapter:

- (1) "Agency" means the Divisions and Offices of NRCD, as well as the boards, commissions, committees, and councils of NRCD with decision-making authority; except where the context clearly indicates otherwise.
- (2) "Cumulative Effect" results from the incremental impact of the proposed activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other activities. Cumulative effects can result from individually minor but collectively significant activities taking place over a period of time.
- (3) "Major Activity" means any activity with a potential for significantly affecting the quality of the environment, depending upon how the activity is carried out, including but not limited to construction, management, and maintenance programs and projects.
- (4) "Non-Major Activity" includes those activities that are clearly not major and have only a minimum potential for significantly affecting the quality of the environment.
- (5) "Non-State Entity" includes local governments, special purpose units of government, contractors, and individuals/corporations to which the NCEPA may apply.
- (6) "Secondary Effects" are caused by and result from the proposed activity although they are later in time or farther removed in distance, but they are still reasonably foreseeable.
- (7) "Secretary" means the Secretary of NRCD.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0202 AGENCY COMPLIANCE

Each NRCD agency shall interpret the provisions of the NCEPA as a supplement to its

existing authority and as a mandate to view its policies and programs in the light of the NCEPA's comprehensive environmental objectives, except where existing law applicable to the agency's operations expressly prohibit or make compliance impossible.

Statutory Authority G.S. 113A, Article 1; 143B-10.

SECTION .0300 - INTEGRATION WITH AGENCY ACTIVITY

.0301 EARLY APPLICATION OF THE NCEPA

(a) Environmental documents shall be prepared for the following agency activities, where it is deemed by the secretary that a potential effect upon the environment of the state may result. This does not include activities excluded by the minimum criteria set out in Section .0600 of this Subchapter.

- (1) Proposed master plans and management plans for the development or management of lands and waters owned or managed by any NRCD agency, including public trust areas.
- (2) Proposed construction of facilities or infrastructures on lands and waters owned or managed by any NRCD agency. This requirement may be met in-whole or in-part through the fulfillment of Subparagraph (a)(1) of this Rule.
- (3) Specific programs conducted by NRCD agencies on lands and waters or in the atmosphere owned or managed by the state.
- (4) Projects to be conducted by governmental agencies or for projects to be supported in-whole or in-part by public monies, and requiring NRCD approval.

(b) Environmental documents shall be issued by NRCD agencies for local government and private activities in those cases where NRCD has State Project Agency responsibility.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0302 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

(a) Agencies may prepare an environmental evaluation, and use the NCEPA process for structure, on any activity at any time in order to assist agency planning and decision-making.

(b) Agencies shall prepare an environmental assessment in accordance with the NCEPA and the related state rules at 1 NCAC 25 for those activities above the thresholds set in NRCD's minimum criteria as set out in Section .0600 of this Subchapter.

(c) An assessment is not necessary if an agency has decided to prepare an environmental impact statement, because the scope or complexity of the activity has a clear potential for environmental effects.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0303 LEAD AND COOPERATING AGENCY RESPONSIBILITY

Where NRCD is the State Project Agency the secretary shall appoint a lead agency and cooperating agencies as appropriate. The lead and cooperating agency's responsibilities shall be established by the secretary.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0304 SCOPING AND HEARINGS

NRCD agencies shall utilize scoping and hearing processes in their NCEPA activities appropriate to the complexity, potential for environmental effects, and level of expressed interest associated with the proposed activity. Scoping and hearings shall be carried out in a manner established by the secretary.

Statutory Authority G.S. 113A, Article 1; 143B-10.

SECTION .0400 - PREPARATION OF ENVIRONMENTAL DOCUMENTS

.0401 IMPLEMENTATION

NRCD agencies shall prepare environmental documents in accordance with the NCEPA, its related rules at 1 NCAC 25, the rules in this Subchapter, and procedures established by the secretary.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0402 INCORPORATION BY REFERENCE

(a) Agencies shall incorporate material into environmental documents by reference to cut down on bulk without impeding agency and public reviews of the action. The incorporated material shall be cited in the document and its contents briefly described.

(b) Incorporated-by-reference material must be reasonably available for inspection by reviewers and potentially interested persons within the time allowed for comment.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0403 INCOMPLETE OR UNAVAILABLE INFORMATION

(a) Where an agency is evaluating significant effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, the agency should always make clear that such information is lacking or that uncertainty exists.

(b) If the information relevant to the effects is essential to a reasonable choice among alternatives and the overall costs of and time for obtaining it are not out of proportion to the potential environmental effects of the activity, the agency should include the information in the environmental document.

(c) If the information relevant to the effects is essential to a reasoned choice among alternatives and the overall cost of and time for obtaining it are out of proportion to the potential environmental effects of the activity, or the means of obtaining it are not known (beyond the state of the art), then the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include within the environmental document:

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this Section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

Statutory Authority G.S. 113A, Article 1; 143B-10.

SECTION .0500 - OTHER REQUIREMENTS

.0501 AGENCY DECISION-MAKING PROCEDURES

To ensure that NRCD agency decisions are made in accordance with the policies and purposes of the NCEPA, the continuing responsibility for conforming existing and new procedures and rules shall be conducted in accordance with the directives of the secretary.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0502 LIMITATION ON ACTIONS DURING NCEPA PROCESS

(a) While work on an environmental document is in progress and the activity is not covered by an existing environmental document, no agency shall undertake in the interim any action which might:

- (1) limit the choice among alternatives or otherwise prejudice the ultimate decision on the issue; or
- (2) have an environmental effect of its own.

(b) If an agency is considering a proposed action for which an environmental document is to be or is being prepared, the agency shall promptly notify the initiating party that the agency cannot take final action until the environmental documentation is completed and available for use as a decision-making tool. The notification shall be consistent with the statutory and regulatory requirements of the agency and may be in the form of a notification that the application is incomplete.

(c) When an agency decides that a proposed activity, for which state actions are pending or have been taken, requires environmental documentation then the agency should promptly notify all action agencies of the decision. When statutory and regulatory requirements prevent an agency from suspending action, the agency shall deny any action for which it determines an environmental document is necessary but not yet available as a decision-making tool.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0503 EMERGENCIES

(a) Where emergency circumstances make it necessary to take an otherwise lawful action with potential environmental effects without observing the public review provisions of the NCEPA, the agency taking the action should notify the secretary and limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare.

(b) Agencies are encouraged to prepare and maintain environmental documents for repetitive emergency programs affecting the public, to review the scope of involved activities, identify specific effects to be expected, and mitigation measures that can be employed in various circumstances to assure protection of the public and long-term environmental productivity.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0504 NON-STATE INVOLVEMENT AND CONTRACTORS

(a) If a lead agency requires a non-state entity to submit environmental information for use by the agency in preparing an environmental document for the non-state entity's activity, then the agency shall assist by outlining the types of information requested. The agency shall independently evaluate the information provided and shall be responsible for its accuracy.

(b) If a lead agency permits a non-state entity to prepare an environmental document, the lead agency shall furnish guidance and participate in the preparation, and take responsibility for its scope, objectivity, content, and accuracy.

(c) An environmental document may be prepared by a contractor, either selected by or acceptable to the lead agency.

Statutory Authority G.S. 113A, Article 1; 143B-10.

SECTION .0600 - MINIMUM CRITERIA

.0601 PURPOSE

This Section establishes minimum criteria to be used in determining when environmental documents are not required. The minimum criteria, as defined in state rules at 1 NCAC 25, shall be used by the secretary and NRCD agencies to provide sound decision-making processes by allowing separation of activities with a high potential for environmental effects (major) from those with only a minimum potential (non-major).

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0602 MAJOR ACTIVITIES

(a) Major activities requiring environmental documents for review by decision-makers and the public are those presented in Section .0300 of this Subchapter, and not otherwise excluded by these minimum criteria.

(b) Major activities taken after preparation of and in conformance with a master plan, man-

agement plan, or program for which an environmental document was completed, may require an environmental assessment, a finding of no significant impact, or a record of decision. Determination of which type of document is most appropriate will be made after considering:

- (1) the need for updating information in the earlier broader document as it relates to current conditions and the proposed activity, and
- (2) the specificity and sufficiency of the earlier, broader document in addressing the effects of the proposed activity.
- (c) Demolition of or additions, rehabilitation and/or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Cultural Resources that the structure lacks architectural or historical significance.
- (d) Ground disturbances involving Natural Register listed archaeological sites or areas around buildings 50 years old or older, except where agreement exists with the Department of Cultural Resources.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0603 EXCEPTIONS TO MINIMUM CRITERIA

Any activity falling within the parameters of the minimum criteria set out in Rule .0604 of this Section will not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of NRCD may determine that environmental documents under the NCEPA are required in any case where one of the following findings applies to a proposed activity.

- (1) The proposed activity may have a potential for significant adverse effects on wetlands, parklands, prime or unique agricultural lands, or areas of recognized scenic, recreational, archaeological, or historical value including indirect effects; or would threaten a habitat identified on the Department of Interior's or state's threatened and endangered species lists.
- (2) The proposed activity could cause significant changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, air quality, or ground water impacts; or affect long-term recreational benefits, shellfish, wildlife, or their natural habitats.
- (3) The proposed activity has secondary impacts, or is part of cumulative effects, not

generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment.

- (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

Statutory Authority G.S. 113A, Article 1; 143B-10.

.0604 NON-MAJOR ACTIVITY

The following minimum criteria are established as an indicator of the types and classes of thresholds of activity at and below which environmental documentation under the NCEPA is not required. As set out in Rule .0603 of this Section, the secretary may require environmental documentation for activities that would otherwise qualify under these minimum criteria thresholds.

- (1) Sampling, survey, monitoring and related research activities including but not limited to the following:
 - (a) Aerial photography projects involving the photographing or mapping of the lands of the state.
 - (b) Biological sampling and monitoring of fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone.
 - (c) Soil survey projects involving the sampling or mapping of the soils of the state.
 - (d) Establishing stream gaging stations for the purpose of measuring water flow at a particular site.
 - (e) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality.
 - (f) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.
 - (g) Placement and use of geodetic survey control points.
 - (h) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment which have minimum long-term effects.
 - (i) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA under the provisions of the Environmental Review Procedures at 24 CFR Part 58.

- (2) Standard maintenance or repair activities as needed to maintain the originally defined function of a project or facility (but without expansion, increase in quantity, or decrease in quality) including but not limited to the following:
 - (a) Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.
 - (b) Roads, bridges, parking lots, and their related facilities.
 - (c) Utilities (water, sewer, and electricity) on their existing rights-of-way.
 - (d) Storm sewer and surface drainage systems.
 - (e) Boat ramps, docks, piers, bulkheads, and associated facilities at water-based recreation sites.
 - (f) Diked, highground dredge-material disposal areas.
 - (g) Activities necessary to fulfill the existing requirements of in-effect permits for the protection of the environment and human health.
 - (h) Other maintenance and repair activities on previously approved projects, consistent with existing environmental documents.
 - (i) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.
- (3) Minor construction activities including but not limited to the following:
 - (a) New and expanded surface discharge facilities less than 1,000,000 gallons per day and not resulting in the loss of any existing use.
 - (b) Waste water spray irrigation and rotary distributor systems not greater than 100,000 gallons per day.
 - (c) Sludge disposal facilities on sites of less than 300 cumulative acres and for which the sludge has been determined to be not a hazardous waste.
 - (d) Sewer extensions with less than five miles of new lines and a design volume not exceeding 2,000,000 gallons per day, or individual pump stations not exceeding 2,000,000 gallons per day.
 - (e) New and expanded subsurface waste water systems with a final design capacity not exceeding 100,000 gallons per day.
 - (f) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause a significant alteration in established land use patterns, or degradation of groundwater or surface water quality.
 - (g) Air emissions of pollutants from a minor source or modification as defined in 15 NCAC 2D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.
 - (h) Dams less than 25 feet in height and having less than 50 acre feet of storage capacity.
 - (i) Routine grounds maintenance and landscaping, such as sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits.
 - (j) Any new building construction involving the following:
 - (i) less than 10,000 square feet;
 - (ii) less than twenty five thousand dollars (\$25,000.00) cost;
 - (iii) less than one acre of previously undisturbed ground, unless the site is a National Register archaeological site; or
 - (iv) no handling or storage of hazardous materials in the completed facility.
 - (k) Demolition of or additions, rehabilitation and/or renovations to a structure not listed in the National Register of Historic Places or less than 50 years of age.
 - (l) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.
- (4) Management activities including but not limited to the following:
 - (a) Replenishment of shellfish beds through the placement of shell or seed oysters on depleted and/or suitable marine habitat.
 - (b) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs on Environmental Protection Agency, U.S. Army Corps of Engineers, National Marine Fisheries Service, and U.S. Fish and Wildlife Service approved sites, including the use of artificial reef construction material requiring an EPA certificate of cleanliness from petroleum based products and other pollutants.

- (c) Placement of fish attractors and shelter in public waters.
- (d) Translocation and stocking of native fish and wildlife in accordance with wildlife management plans.
- (e) Reintroduction of native endangered or threatened species in accordance with Federal guidelines or recovery plans.
- (f) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with management plans.
- (g) Timber harvest in accordance with the National Forest Service or the N.C. Division of Forest Resources timber management plans.
- (h) Reforestation of timberlands in accordance with the National Forest Service or the N.C. Division of Forest Resources timber management plans.
- (i) Control of forest or agricultural insects and disease outbreaks, by the lawful application of labeled pesticides and herbicides by licensed applicators, on areas of no more than 100 acres.
- (j) Control of aquatic weeds in stream channels, canals, and other water bodies, by the lawful application of labeled herbicides by licensed applicators, on areas of no more than two acres or 25 percent of the surface area, whichever is less.
- (k) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with Stream Obstruction Removal Guidelines prepared by the Stream Renovation Guidelines Committee of the Wildlife Society and the American Fisheries Society.
- (l) Dredging of existing navigation channels and basins, provided that the spoil is placed in existing and approved high ground disposal areas.
- (m) Controlled or prescribed burning for wildlife and timber enhancement in accordance with applicable management plans.
- (n) Discharges of water treatment plant filter backwash and swimming pool filter backwash.
- (o) Drainage projects where the mean seasonal water table elevation will not be lowered more than one foot over an area of five square miles or less.
- (p) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose

of providing for water supply storage, flood control, recreation, hydroelectric power, and fish and wildlife.

- (q) Increases or modification in previously permitted discharges not exceeding 1,000,000 gallons per day.
- (r) Installation of on-farm Best Management Practices for the N.C. Cost Share Program For Nonpoint Source Pollution Control codified as 15 NCAC 6E.
- (s) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.
- (t) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits, or to be managed in accordance with plans for which environmental documents have been approved.
- (u) Care of all trees, plants, and groundcovers on public lands.
- (v) Care, including medical treatment, of all animals maintained for public display.
- (w) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.

Statutory Authority G.S. 113A, Article 1; 143B-10.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Natural Resources and Community Development (DEM) intends to amend rule(s) cited as 15 NCAC 2B .0305.

The proposed effective date of this action is July 1, 1989.

The public hearing will be conducted at 7:00 p.m. on February 15, 1989 at Cafeteria, Valle Crucis Elementary School, Route 1, Sugar Grove, NC 28679.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may

be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER
STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS

.0305 WATAUGA RIVER BASIN

(c) The Watauga River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) October 1, 1987;
- (4) July 1, 1989.

(d) The Schedule of Classifications and Water Quality Standards for the Watauga River Basin was amended effective July 1, 1989 as follows:

- (1) Dutch Creek (Index No. 8-11) was reclassified from Class C-trout to Class B-trout.
- (2) Pond Creek (Index No. 8-20-2) from water supply intake (located just above Tamarack Road) to Beech Creek and all tributary waters were reclassified from Class WS-III to C.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Natural Resources and Community Development (DEM) intends to amend rule(s) cited as 15 NCAC 2B .0307.

The proposed effective date of this action is July 1, 1989.

The public hearing will be conducted at 7:00 p.m. on February 16, 1989 at Courtroom, Ashe County Courthouse, Jefferson, NC 28640.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer.

Submittal of written copies of oral statements is encouraged.

.0307 NEW RIVER BASIN

(c) The New River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 10, 1980;
- (2) April 1, 1983;
- (3) February 1, 1986;
- (4) July 1, 1989.

(d) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective July 1, 1989 as follows:

- (1) South Fork New River [Index No. 10-1-(30)] from Dog Creek to New River and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and B.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10B .0203; 10C .0208; and 10D .0003.

The proposed effective date of this action is July 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 15, 1989 at Room 386, Archdale Bldg, 512 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 31, 1989 to March 2, 1989. Such written comments must be delivered or mailed to the Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND
WATER SAFETY

SUBCHAPTER 10B - HUNTING AND
TRAPPING

SECTION .0200 - HUNTING

.0203 DEER (WHITE-TAILED)

- (b) Open Seasons (All Lawful Weapons)

- (1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

- (A) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

Beaufort	Duplin
Bertie	Edgecombe
Bladen	Franklin
Brunswick	Gates
Camden	Greene
Carteret	Halifax
Chowan	Hertford
Columbus*	Hoke
Craven	Hyde
Currituck	Jones
Dare	
Lenoir	Pitt
Martin	Richmond**
Nash	Robeson
New Hanover	Scotland**
Northampton	Tyrrell
Onslow	Vance
Pamlico	Warren
Pasquotank	Washington
Pender	Wayne
Perquimans	Wilson

~~*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.~~

~~**See 15 NCAC 10D .0003(d)(2) for seasons on Sandhills Game Land.~~

Cumberland: All of the county except that part north of NC 24 east of Fayetteville and east of NC 210 north of Fayetteville.

Harnett: That part west of NC 87.

Johnston: All of the county except that part south of US 70 and west of I-95.

Moore**: That part south of NC 211 and east of US 1. ~~except on the Sandhills Game Land [see 15 NCAC 10D .0003(d)(2)].~~

Sampson: All of the county except that part west of NC 242 and north of US 13.

Wake: That part north of NC 54 west of Raleigh and US 70 east of Raleigh.

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**See 15 NCAC 10D .0003(d)(2) for seasons on Sandhills Game Land.

Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

.0208 SPAWNING AREAS

The following waters are designated as spawning areas in which fishing is prohibited or restricted as indicated:

- (1) No person shall fish by any method or at any time in, or within 50 feet of, the fish ladder at Quaker Neck Dam on Neuse River in Wayne County.
- (2) No person shall fish by any method from February 15 to April 15, both inclusive, in Linville River from the NC 126 bridge downstream to the backwater of Lake James in Burke County.
- (3) No person shall fish by netting in that portion of the Dan River lying within the State downstream from the Brantly Steam Plant at Danville, or in the Roanoke River between the US 258 bridge and the dam of Roanoke Rapids Lake, or while in or on said rivers within said areas, have in possession any bow net, dip net or any landing net having a handle exceeding eight feet in length or a hoop or frame to which the net is attached exceeding 60 inches along its outside perimeter.
- (4) ~~No person shall fish by any method in Bee Tree Canal in Tyrrell County within 50 yards of the Lake Phelps fish ladder.~~

Statutory Authority G.S. 113-134; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(c) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. On Butner-Falls of Neuse, New Hope and Shearon Harris Game Lands waterfowl hunting

is prohibited after limited to the period from ~~one half hour before sunrise to~~ 1:00 p.m. on the open hunting days. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods. No person shall use an electronic calling device for the purpose of attracting wild birds or wild animals.

No live wild animals or wild birds shall be removed from any game land.

(d) Hunting Dates

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Years Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land
Beaufort and Craven Counties--Big Pocosin

Game Land (Dogs may not be trained or used in hunting from March 2 to August 31. Deer of either sex may be taken on November 30 and on December 3. Trapping is controlled by the landowner.)

Bertie County--Bertie County Game Lands
Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting.)

~~Cabarrus County--River View Acres Game Land~~

Caswell County--Caswell Game Land (That part designated and posted as a "safety zone" is closed to all hunting and trapping, and entry upon such area for any purpose, except by authorized personnel in the performance of their duties,

is prohibited. On areas posted as "restricted zones" hunting is limited to bow and arrow.)

Catawba and Iredell Counties--Catawba Game Land

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

~~Robeson County--Keith Farm Game Land (No deer may be taken.)~~

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:

(A) Bears may not be taken on lands designated and posted as bear sanctuaries;

(B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons and the regular gun season on male deer on bear sanctu-

- aries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
- (C) On game lands located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, dogs may not be used for any hunting (day or night) during the regular season for hunting deer with guns; except that small game may be hunted with dogs in season on all game lands, other than bear sanctuaries, in the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk and Swain;
- (D) On Croatan, Goose Creek, New Hope and Shearon Harris Game Lands waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Years Days; and on the opening and closing days of the applicable waterfowl seasons; except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Years Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (H) On Angola Bay, Croatan, Goose Creek, Hofmann Forest and Tuscarora Game Lands deer of either sex may be taken during the period November 30 through December 3; and
- (I) Additional restrictions or modifications apply as indicated in parentheses following specific designations.
- Alexander and Caldwell Counties--Brushy Mountains Game Lands
- Anson County--Anson Game Land
- Ashe County--Bluff Mountain Game Lands
- Ashe County--Cherokee Game Lands
- Ashe and Watauga Counties--Elk Knob Game Land
- Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)
- Beaufort, Bertie and Washington Counties--Bachelor Bay Game Lands
- Beaufort and Pamlico Counties--Goose Creek Game Land
- Brunswick County--Green Swamp Game Land
- Burke County--South Mountains Game Lands
- Burke, McDowell and Rutherford Counties--Dysartsville Game Lands
- Caldwell County--Yadkin Game Land
- ~~Carteret County--Lukens Island Game Land~~
- Carteret, Craven and Jones Counties--Croatan Game Lands
- Chatham County--Chatham Game Land
- Chatham and Wake Counties--New Hope Game Lands
- Chatham and Wake Counties--Shearon Harris Game Land
- Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands (It is unlawful to take or hunt deer on Fires Creek Bear Sanctuary. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on Fires Creek Bear Sanctuary at any time, except that dogs may be used when hunting raccoon or opossum and for hunting grouse and rabbits during the open seasons. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.)

Chowan County--Chowan Game Land
Cleveland County--Gardner-Webb Game Land
Craven County--Neuse River Game Land
Craven County--Tuscarora Game Land
Currituck County--North River Game Land
Currituck County--Northwest River Marsh Game Land
Dare County--Dare Game Land (No hunting on posted parts of bombing range.)
Davidson, Davie and Rowan Counties--Alcoa Game Land
Davidson County--Linwood Game Land
Davidson, Montgomery, Randolph and Stanly Counties--Uwharrie Game Land
Duplin and Pender Counties--Angola Bay Game Land
Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On portions of the Butner-Falls of Neuse Game Land designated and posted as "safety zones" and on that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. On portions posted as "restricted zones" hunting is limited to bow and arrow during the bow and arrow season and the regular gun season for deer.)
Franklin County--Franklin Game Lands
Gates County--Chowan Swamp Game Land
Granville County--Granville Game Lands
Halifax County--Halifax Game Land
Harnett County--Harnett Game Land
Henderson, Polk and Rutherford Counties--Green River Game Lands
Hyde County--Gull Rock Game Land
Hyde County--Pungo River Game Land
Hyde and Tyrrell Counties--New Lake Game Land
Jones and Onslow Counties--Hofmann Forest Game Land
Lee County--Lee Game Land
McDowell County--Hickory Nut Mountain Game Land
Moore County--Moore Game Land
New Hanover County--Catfish Lake Game Land
Northampton County--Northampton Game Land
Orange County--Orange Game Land
Person County--Person Game Land
Richmond County--Richmond Game Land
Transylvania County--Toxaway Game Land
Vance County--Vance Game Land
Warren County--Warren Game Lands
Wilkes County--Thurmond Chatham Game Land

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Nursing intends to amend rule(s) cited as 21 NCAC 36 .0213; adopt .0224 - .0227; and repeal .0222 - .0223.

The proposed effective date of this action is May 1, 1989.

The public hearing will be conducted at 10:00 a.m. on February 17, 1989 at Holiday Inn North, 2815 North Boulevard, Raleigh, NC 27604.

Comment Procedures: Any person wishing to address the board relevant to proposed rules should notify the board by noon on February 16, 1989, register at the door the day of the hearing, and present the Hearing Officer with a written copy of the oral testimony. Oral presentations will be limited to three minutes per speaker. Written comments only should be directed, five days prior to the hearing date, to the N.C. Board of Nursing, P.O. Box 2129, Raleigh, NC 27602.

CHAPTER 36 - BOARD OF NURSING

SECTION .0200 - LICENSURE

.0213 REEXAMINATION

(a) ~~The~~ An applicant eligible for reexamination must submit a completed application and the ~~correct~~ current examination fee by the published deadline date for that examination session.

(b) An applicant who ~~was graduated before July 1, 1981, and fails to pass the examination on the first writing, may rewrite at subsequent examination sessions.~~ reestablishes eligibility for examination shall not be considered a first-time writer.

(c) An applicant ~~who was graduated after July 1, 1981 must pass the examination within three years of graduation or reenter and successfully complete a board approved nursing program to be eligible to take subsequent examinations.~~ is only eligible to rewrite the examination for the level of licensure of the original examination application.

(d) ~~Successful completion of a board approved nursing program requires that applicant must:~~

- (1) Meet the current admission criteria of the program to which he is seeking admission. The applicant is free to choose any board approved program which prepares candidates for the appropriate licensure examination;
- (2) After this current admission, readmission, meet the current criteria for graduation from the program;
 - (A) The nurse faculty must be able to validate that the applicant has successfully met the current criteria for all nursing courses;
 - (B) Validation of nursing courses which have a practicum component must include clinical evaluation;
 - (C) Validation of required criteria must accompany the transcript which must be submitted with the examination application.

An applicant who wrote and failed the examination prior to July 1, 1981, shall not be required to reestablish eligibility for examination.

(c) An applicant who completes the requirements set forth in Rule .0213 (d) will be considered a first-time writer from that program. was graduated after July 1, 1981, must pass the examination within three years of graduation. The applicant who fails to pass the examination within three years of graduation must successfully complete a nursing program which has been approved by the board as one to reestablish eligibility for examination. The reestablished eligibility for examination shall be for three years.

(f) An applicant for re-examination is not eligible for a temporary license. A nursing program approved by the board to reestablish eligibility is one:

- (1) which is offered by or in conjunction with an existing nursing program approved by the Board of Nursing and whose curriculum is designed to prepare graduates for registered nurse and/or practical nurse licensure as stipulated by APPROVAL OF NURSING PROGRAMS: PROCESS AND STANDARDS (Section .0300 of these Rules); and
- (2) whose objectives/competencies are in accord with out-comes expected of an individual in nursing practice as legally defined for licensure level; and
- (3) which has been submitted to the board for approval of the program's purposes, related policies, and objectives' competencies prior to enrollment of applicants.

(g) An applicant who successfully completes a nursing program approved by the board to reestablish eligibility for examination is eligible for a

Status A temporary license. Eligibility for a Status A temporary license will be restricted to once every three years.

(h) Successful completion by an applicant of a nursing program approved by the board to reestablish eligibility for examination requires that the faculty of the program or the applicant submit evidence validating classroom and clinical competencies.

Statutory Authority G.S. 90-171.31.

.0222 COMPONENTS OF NURSING PRACTICE (REPEALED)

.0223 CONTINUING EDUCATION PROGRAMS (REPEALED)

Statutory Authority G.S. 90-171.20(g)(h); 90-171.42.

.0224 COMPONENTS OF PRACTICE FOR THE REGISTERED NURSE

(a) Nursing assessment is an ongoing process and consists of the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client.

(1) Collection of data includes:

(A) obtaining data from relevant sources regarding the biological, psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:

- (i) observations of appearance and behavior;
- (ii) measurements of physical structure and physiologic function;
- (iii) information regarding available resources; and

(B) verifying data collected.

(2) Interpretation of data includes:

- (A) analyzing the nature and interrelationships of collected data; and
- (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.

(3) Formulation of a nursing diagnosis includes:

(A) describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, or for which referral to medical or community resources is appropriate; and

(B) developing a statement of a client problem identified through interpretation of collected data.

(b) Planning nursing care activities include identifying the client's needs and selecting or modifying nursing interventions related to the

findings of the nursing assessment. Components of planning include:

- (1) prioritizing nursing diagnosis or needs;
- (2) setting goals and outcome criteria;
- (3) initiating or participating in multidisciplinary planning;
- (4) determining and prioritizing nursing interventions and actions;
- (5) developing a plan of care; and
- (6) identifying resources based on necessity and availability.

(c) Implementation of nursing actions is the initiating and delivering of nursing care according to a specific plan which includes, but is not limited to:

- (1) procuring resources;
- (2) actualizing nursing and medical orders;
- (3) performing nursing interventions;
- (4) analyzing responses to nursing actions;
- (5) modifying nursing interventions; and
- (6) delegating and supervising nursing actions commensurate with the preparation and qualifications of the individual consistent with G.S. 90-171.20(g)(9); 21 NCAC 36 .0224(e)(f); and 21 NCAC 36 .0401.

(d) Evaluation consists of determining the extent to which desired outcomes of care are met and planning for subsequent care. Components of evaluation include:

- (1) collecting evaluative data from relevant sources;
- (2) analyzing the effectiveness of nursing actions; and
- (3) modifying the plan of care based upon newly collected data, change in the client's status, and expected outcomes.

(e) Managing the delivery of nursing care through the ongoing supervision, teaching and evaluation of nursing personnel is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing and includes, but is not limited to:

- (1) continuous availability for direct participation in nursing care, on-site when necessary, as indicated by clients' status and by the variables cited in 21 NCAC 36 .0224(f);
- (2) assessing capabilities of personnel in relation to client status and plan of nursing care;
- (3) delegating responsibility or assigning nursing care functions to personnel qualified to assume such responsibility and to perform such functions;
- (4) accountability for nursing care given by all personnel to whom that care is delegated; and

- (5) direct observation of patients and evaluation of nursing care given.

(f) The supervisory responsibility which a registered nurse can safely accept is determined by the nurse's own qualifications and the variables in each nursing practice setting. The variables include:

- (1) the complexity and frequency of nursing care needed by a given client population;
- (2) the proximity of clients to personnel;
- (3) the qualifications and number of staff;
- (4) the accessible resources; and
- (5) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(g) Reporting and recording by the registered nurse are those communications required in relation to all aspects of nursing care.

- (1) Reporting means the communication of significant information to other persons responsible for, or involved in, the care of the client. The registered nurse is accountable for:

- (A) directing the communication to the appropriate person(s);
- (B) communicating within a time period which is consistent with the client's need for care;
- (C) evaluating any responses to information reported; and
- (D) determining whether further communication is indicated.

- (2) Recording means the documentation of all significant information on the appropriate client record, nursing care plan, or other documents. This documentation must:

- (A) be pertinent to the client's health care;
- (B) accurately describe all aspects of nursing care including assessment, planning, implementation, and evaluation;
- (C) be completed within a time period consistent with the client's need for care;
- (D) reflect the communication of significant information to other persons; and
- (E) verify the proper administration and disposal of controlled substances.

(h) Collaborating involves communicating and working cooperatively with individuals whose services may have a direct or indirect effect upon the client's health care. The role of the registered nurse in collaborating in client care includes:

- (1) coordinating, planning, and implementing nursing or multidisciplinary approaches;
- (2) participating in decision-making and in cooperative goal-directed efforts;

- (3) seeking and utilizing appropriate resources in the referral process; and
- (4) safeguarding confidentiality.
- (i) Teaching and counseling clients is the responsibility of the registered nurse, consistent with G.S. 90-171.20(g)(7).
 - (1) Teaching and counseling consist of providing accurate and consistent information, demonstrations and guidance to clients and their families regarding the client's health status and health care for the purposes of:
 - (A) increasing their knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
 - (2) Teaching and counseling include, but are not limited to:
 - (A) assessing the client's needs and abilities;
 - (B) adapting teaching content and methods to the identified needs and abilities of the client(s);
 - (C) evaluating effectiveness of teaching and counseling; and
 - (D) making referrals to appropriate resources.
 - (j) Administering nursing services is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing in G.S. 90-171.20(g)(9), and includes, but is not limited to:
 - (1) identification of standards, policies and procedures related to the delivery of nursing care;
 - (2) planning for and evaluation of the nursing care delivery system; and
 - (3) management of licensed and unlicensed personnel who provide nursing care consistent with Paragraphs (e) and (f) of this Rule and which includes:
 - (A) defined levels of accountability and responsibility within the nursing organization;
 - (B) a mechanism to validate qualifications, knowledge, and skills of nursing personnel;
 - (C) provision of educational opportunities related to expected nursing performance; and
 - (D) validation of the implementation of a system for performance evaluation.
- (a) Nursing assessment is an ongoing process and consists of the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client.
 - (1) Collection of data includes:
 - (A) obtaining data from relevant sources regarding the biological, psychological, social, and cultural factors of the client's life and the influence these factors have on health status, including:
 - (i) observations of appearance and behavior;
 - (ii) measurements of physical structure and physiologic function;
 - (iii) information regarding available resources; and
 - (B) verifying data collected.
 - (2) Interpretation of data includes:
 - (A) participation in the analysis of the nature and interrelationships of collected data; and
 - (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.
 - (3) Participation in the formulation of a nursing diagnosis consists of describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, or for which referral to medical or community resources is appropriate.
 - (b) Planning nursing care activities includes participation in the identification of client's needs and modification of nursing interventions related to the findings of the nursing assessment. Components of planning include:
 - (1) utilization of assessment data in making decisions regarding implementation of medical and nursing orders and plan of care;
 - (2) participation in multidisciplinary planning by providing resource data; and
 - (3) identification of interventions for review by the registered nurse.
 - (c) Implementation of nursing actions consists of delivering nursing care according to a specified plan under the direction of person(s) authorized by law, and includes:
 - (1) procuring resources;
 - (2) actualizing nursing and medical orders;
 - (3) performing nursing interventions;
 - (4) analyzing responses to nursing actions;
 - (5) modifying nursing interventions; and
 - (6) delegating and supervising nursing actions commensurate with the preparation and qualifications of the individual consistent with 21 NCAC 36 .0225(e) and 21 NCAC 36 .0401.

Statutory Authority G.S. 90-171.20(g).

.0225 COMPONENTS OF PRACTICE FOR THE LICENSED PRACTICAL NURSE

(d) Evaluation, a component of implementing nursing actions, consists of participation in determining the extent to which desired outcomes of care are met and in planning for subsequent care. Components of evaluation include:

- (1) collecting evaluative data from relevant sources;
- (2) determining the effectiveness of nursing actions; and
- (3) proposing modifications to the plan of care based upon newly collected data, change in the client's status, and expected outcomes.

(e) The licensed practical nurse may implement nursing care by delegating nursing care activities to other licensed practical nurses and unlicensed personnel appropriate to the level of knowledge and skills of personnel to whom care is delegated and providing all of the following criteria are met:

- (1) continuous availability of a registered nurse for supervision consistent with 21 NCAC 36 .0224(c);
- (2) participation by the licensed practical nurse in observations of clients and evaluation of nursing actions;
- (3) retention of accountability by the licensed practical nurse for nursing care given by self and all other personnel to whom such care is delegated; and
- (4) provision of appropriate supervision as determined by the variables in each nursing practice setting. The variables include:
 - (A) the complexity and frequency of nursing care needed by a given client population;
 - (B) the proximity of clients to personnel;
 - (C) the qualifications and number of staff;
 - (D) the accessible resources; and
 - (E) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(f) Reporting and recording by the licensed practical nurse are those communications required in relation to all aspects of nursing care.

- (1) Reporting means the communication of significant information to other persons responsible for, or involved in, the care of the client. The licensed practical nurse is accountable for:

- (A) directing the communication to the appropriate person(s);
- (B) communicating within a time period which is consistent with the client's need for care;
- (C) evaluating any responses to information reported; and

- (D) determining whether further communication is indicated.

- (2) Recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:

- (A) be pertinent to the client's health care;
- (B) accurately describe all aspects of nursing care including assessment, planning, implementation, and evaluation;
- (C) be completed within a time period consistent with the client's need for care;
- (D) reflect the communication of significant information to other persons; and
- (E) verify the proper administration and disposal of controlled substances.

(g) Collaborating involves communicating and working cooperatively in implementing the health care plan with individuals whose services may have a direct or indirect effect upon the client's health care. The licensed practical nurse's role in collaborating in client care includes:

- (1) participating in planning and implementing nursing or multidisciplinary approaches;
- (2) participating in decision-making and in cooperative goal-directed efforts;
- (3) seeking and utilizing appropriate resources in the referral process; and
- (4) safeguarding confidentiality.

(h) The licensed practical nurse provides teaching and counseling to clients consistent with G.S. 90-171.20(h)(3)(4).

- (1) Teaching and counseling consist of providing accurate and consistent information, demonstrations, and guidance to clients and their families regarding the client's health status and health care for the purposes of:

- (A) increasing their knowledge;
- (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
- (C) promoting the client's ability to make informed decisions.

- (2) Teaching and counseling as part of implementing the health care plan includes, but is not limited to:

- (A) assessing the client's needs and abilities;
- (B) participating in the teaching and counseling process;
- (C) evaluating the effectiveness of teaching and counseling; and
- (D) making referrals to appropriate resources.

Statutory Authority G.S. 90-171.20(h).

**.0226 RESERVED FOR FUTURE
CODIFICATION**

**.0227 CONTINUING EDUCATION
PROGRAMS**

(a) Definitions.

(1) Continuing education in nursing is a non-degree oriented, planned, organized learning experience taken after completion of a basic nursing program.

(2) Programs offering an educational experience designed to enhance the practice of nursing are those which include one or more of the following:

- (A) enrichment of knowledge;
- (B) development or change of attitudes;
- (C) acquisition or improvement of skills.

(3) Programs are considered to teach nurses advanced skills when:

(A) the skill is not generally included in the basic educational preparation of the nurse; and

(B) the period of instruction is sufficient to assess or provide necessary knowledge from the physical, biological, behavioral and social sciences, and includes supervised clinical practice to ensure that the nurse is able to practice the skill safely and properly.

(4) Student status may be granted to individuals who do not hold a North Carolina nursing license but who participate in continuing education programs in North Carolina when:

(A) The individual possesses a current unencumbered license to practice nursing in a jurisdiction other than North Carolina; and

(B) The course offering is approved by the board; and

(C) The individual receives supervision by a qualified member of the faculty who has a valid license to practice as a registered nurse in North Carolina; and

(D) The course of instruction has a specified period of time not exceeding 12 months; and

(E) There is no provision for employment of the "student"; and

(F) The board has been given advance notice of the names of the students, the jurisdictions in which they are licensed, the license numbers, and the expiration dates.

(b) Guidelines for voluntary approval of continuing education programs in nursing.

(1) Planning shall include:

(A) definition of learner population; for example, registered nurse, licensed practical nurse, or both;

(B) identification of characteristics of the learner; for example, clinical area, place of employment, position; and

(C) assessment of needs of the learner; for example, requests, questionnaire, chart audit.

(2) Objectives shall:

(A) be measurable and in behavioral terms;

(B) reflect needs of learners;

(C) state desired outcomes;

(D) serve as criteria for selection of content, learning experiences and evaluation of achievement;

(E) be achievable within time allotted; and

(F) be applicable to nursing.

(3) Content shall:

(A) relate to objectives;

(B) reflect input by qualified faculty; and

(C) contain learning experiences appropriate to objectives.

(4) Teaching methodologies shall:

(A) utilize pertinent educational principles;

(B) provide adequate time for each learning activity; and

(C) include sharing objectives with participants.

(5) Resources shall include:

(A) faculty who have knowledge and experience necessary to assist the learner to meet the program objectives and are in sufficient number not to exceed a faculty-learner ratio in clinical practicum of 1:10. If higher ratios are desired, sufficient justification must be provided;

(B) physical facilities which ensure that adequate and appropriate equipment and space are available and appropriate clinical resources are available.

(6) Evaluation will be conducted:

(A) by the provider to assess the participant's achievement of program objectives and content and will be documented; and

(B) by the learner in order to assess the program and resources.

(7) Records shall be maintained by the provider for a period of three years and shall include a summary of program evaluations, roster of participants, and course outline. The provider shall award a certificate to each participant who successfully completes the program.

(c) Approval process.

(1) The provider shall:

- (A) make application on forms provided by the board no less than 60 days prior to the proposed enrollment date;
 - (B) present evidence as specified in 21 NCAC 36 .0227 (b);
 - (C) notify the board of any significant changes relative to the maintenance of guidelines; for example, changes in faculty, total program hours.
- (2) Approval is granted for a two-year period. Any request to offer an approved program by anyone other than the original provider must be made to the North Carolina Board of Nursing.
 - (3) If a course is not approved, the provider may appeal in writing for reconsideration within 30 days after notification of the disapproval. If the course is not approved upon reconsideration, the provider may request a hearing at the next regularly scheduled meeting of the board.
 - (4) Site visits may be made by the board as deemed appropriate to determine compliance with the guidelines.
 - (5) The board shall withdraw approval from a provider if the provider does not maintain the quality of the offering to the satisfaction of the board or if there is misrepresentation of facts within the application for approval.
 - (6) Approval of continuing education programs will be included in published reports of board actions. A list of approved programs will be maintained in the board's file.

Statutory Authority G.S. 90-171.42.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office State Personnel/State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1D .0301 - .0302, .1201 - .1204, 1E .1005, 1I .0706 - .0707, 1J .0402, .0406 and .0407.

The proposed effective dates of this action are 25 NCAC 1D .1201 - .1204 - July 1, 1989, all others May 1, 1989.

The public hearing will be conducted at 9:00 a.m. on February 15, 1989 at 101 W. Peace Street, Raleigh, N. C. 27611.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office State Personnel, 116 W. Jones Street, Raleigh, N. C. 27611.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0300 - PROMOTION

.0301 DEFINITION AND POLICY

Promotion is a change in status upward, documented according to customary professional procedure and approved by the State Personnel Director, resulting from assignment to a position of higher level. When it is practical and feasible, a vacancy should be filled from among ~~the~~ eligible ~~permanent~~ employees; a vacancy must be filled by an applying employee if required by 25 NCAC, Subchapter III, Recruitment and Selection, Section .0600, General Provisions, Rule .0625, Promotion Priority Consideration for Current Employees. Selection should be based upon demonstrated capacity, quality and length of service.

Statutory Authority G.S. 126-4; 126-7.1.

.0302 SALARY RATE

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. ~~The primary factor determining the amount of increase is the relative difference in difficulty and responsibility between the present and new positions.~~ Since promotional increases result in ~~permanent change to basic salary; a promotional increase of more than two steps cannot be justified as an offset to temporary costs of promotion, such as relocation expenses.~~ Subject to the availability of funds, the following will apply:

(1) Permanent Promotion:

- (a) The salary shall be increased to step one or by one step whichever is larger, but not to exceed the maximum of the higher range. shall not be exceeded. Exceptions:
 - (i) When internal salary equity or budget considerations in the receiving work unit or agency are necessary, and a specific salary rate is published in advance of a promotional offer;
 - (ii) When an employee is demoted with no change in salary and subsequently promoted back to the same level within one

year, the salary shall remain unchanged and treated as if the demotion had not occurred:

- (iii) If the employee's salary is above the maximum as a result of a reallocation down, no increase may be given but the salary may remain above the maximum.
- (i) (b) If a probationary employee is promoted and the salary is at the hiring rate, the salary must be increased to the hiring rate of the grade to which promoted until the employee is eligible for permanent appointment.
- (ii) (c) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.
- (i) (d) The salary may be increased by one and one half steps or two steps more than one step, not to exceed the number of salary grades provided by the promotion. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making such requests. Only in extreme, well-documented circumstances will salary increases be considered which equate to more steps than the number of grades provided by the promotion. Personnel forms must include the justification.
- (e) If the agency finds it necessary and equitable to consider a larger increase for a promotion involving a three or more grade level change, a salary increase of more than two steps may be requested. Some factors to be considered are: nature and magnitude of the change in jobs; available applicants; special or technical expertise required; and previous training and experience. Such requests may be made provided:
 - (i) The agency head accepts accountability for the decision of the amount to grant and will provide written documentation giving reasons and justification for the requests.
 - (ii) Salary inequities are not created within the work unit or program.
- (e) Since promotional increases result in permanent change to basic salary, a larger promotional increase cannot be justified as an offset to temporary costs of promotion, such as relocation expenses.

Statutory Authority G.S. 126-4.

SECTION .1200 - LONGEVITY PAY

.1201 POLICY

Longevity pay is to recognize long-term service of permanent full-time and permanent part-time (half-time or more) employees who have served at least 10 years with the state.

Statutory Authority G.S. 126-4.

.1202 TIME AND METHOD OF PAY

(e) If an employee who has at least 10 years of aggregate total state service retires, resigns or is otherwise separated or dies before a date on which eligible for the longevity payment, a longevity payment computed on a pro rata basis shall be paid if all other eligibility requirements are met. The payment shall be made to the employee or to the estate if deceased.

(g) If an eligible employee goes on extended military leave without pay, a longevity payment computed on a prorata basis shall be paid the same as if the employee is separating. The balance will be paid when the employee returns and completes a full year. Then, a full payment will be made on the employee's longevity date that was established before going on leave without pay. [Example: Received longevity on 6-1-85 on 11 years; extended military leave without pay on 9-1-85 (pay 3/12 longevity on 12 years); reinstated on 12-1-86; pay 9/12 longevity effective 9-1-87 on 13 years (has 13 years 3 months aggregate total state service); pay full longevity effective 6-1-88 on 14 years.]

Statutory Authority G.S. 126-4.

.1203 AMOUNT OF LONGEVITY PAY

(a) Annual longevity pay amounts are based on the length of aggregate total state service and a percentage of the employee's annual rate of base pay on the date of eligibility. Longevity pay amounts are computed by multiplying the employee's base pay rate by the appropriate percentage from the following table. (Salary increases effective on the longevity eligibility date shall be incorporated in the base pay before computing longevity.)

Years of <u>Aggregate Total</u> State Service	Longevity Pay Rate
10 but less than 15 years	1.50 percent
15 but less than 20 years	2.25 percent
20 but less than 25 years	3.25 percent
25 or more years	4.50 percent

Statutory Authority G.S. 126-4.

.1204 ELIGIBILITY REQUIREMENTS

(a) An employee shall have at least 10 years of aggregate total qualifying state service before being eligible for any longevity payments.

(c) An employee's earliest possible date of eligibility for a longevity payment is the date when 10 years of aggregate total state service has been completed. If on the effective date of this policy an employee has completed the qualifying length of service but is somewhere between eligibility dates, longevity payment will not be made until the next longevity anniversary date. In succeeding years a longevity payment will be made annually in the pay period in which the employee's longevity anniversary date falls. Periods of leave without pay in excess of one-half the workdays and holidays in a pay period (with the exception of military leave and workers' compensation leave) will delay the longevity anniversary date.

(d) Credit for the aggregate total service requirement shall not be given for temporary full-time or temporary part-time employment and periods of leave without pay in excess of one-half the workdays and holidays in a pay period, with the exception of military leave and workers' compensation leave.

(e) Upon change of appointment to temporary ~~part-time~~ or exempt (except as provided by statute), the employee is ineligible for continued longevity pay; hence, if the employee has worked part but not all of one year since the last annual longevity payment, a prorata payment shall be made as if the employee were separating from state service, provided the change is not of a temporary nature. If an employee goes on leave without pay, longevity shall not be paid until the employee returns and completes the full year. If, however, the employee should resign while on leave without pay, the prorata amount for which the employee is eligible is paid. Exceptions:

- (1) An employee going on leave without pay due to short-term disability may be paid the prorata amount for which the employee is eligible;
- (2) An employee going on extended military leave without pay shall be paid the prorata amount for which eligible;
- (3) An employee on workers' compensation leave shall be paid longevity as if working.

(g) Aggregate Total state service is the time for of full-time or part-time (half-time or over) permanent, trainee, probationary or provisional employment, whether subject to or exempt from the State Personnel Act. If ~~a an permanent full time~~ employee so appointed is in pay status or is on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. ~~Permanent part-time employment~~

~~is credited as aggregate service on a pro rata basis - it is computed as a percentage of the amount the employee would be credited if permanent full-time.~~ Employees will receive full credit for each pay period they are in pay status for one-half of their regularly scheduled workdays and holidays.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1000 - MISCELLANEOUS LEAVE

.1005 LEAVE: ADVERSE WEATHER CONDITIONS

(a) ~~The following policy will apply when decisions must be made to either continue or temporarily suspend services as a result of adverse weather conditions.~~ The geographical location and diversity of state services and programs make it impossible to apply a uniform statewide policy regarding how operations will be affected in times of adverse weather conditions.

~~(1) Within Wake County. The Governor in cooperation with the Office of State Personnel will determine and announce when administrative offices in Wake County will be closed due to adverse weather. It is recognized that some operations must continue to provide services without regard to weather conditions. Therefore, agency heads will predetermine and designate the mandatory operations which will remain open.~~

~~(1) The administrative offices of State Government in Wake County must be open during normal business hours to serve local governments and the citizens of North Carolina and to provide support services to business and industry. These offices will remain open, even in adverse weather, and it is the responsibility of employees to make a good faith effort to come to work during these times.~~

~~(2) Areas Outside Wake County. Agency heads, or their designated representatives, will determine the operations that will remain open and to what extent other operations may be temporarily closed.~~

~~(2) It is recognized that some other operations in and out of Wake County must continue to provide services without regard to weather conditions. Therefore, agency heads shall predetermine and designate the mandatory operations which will remain open. Agency heads, or their designated representatives, may determine to what~~

extent any other operations may be suspended or temporarily closed.

(b) When it has been determined that services will be suspended, time lost will be charged to vacation leave or leave without pay. If offices remain open, Employees, not working in mandatory operations, who anticipate problems in transportation should be permitted and encouraged to adjust their work schedule when possible or to avail themselves of vacation leave privileges when encountering difficulty in reporting for work or when leaving early.

In either of the above, employees may be allowed to make-up time in accordance with this Rule.

Employees who are on prearranged vacation leave or on sick leave will charge leave to the appropriate account with no provision for make-up time.

(c) When employees are away from work because of adverse weather conditions, where operational needs allow, management may must make every reasonable effect to arrange schedules whereby employees may will be given an opportunity to make up time not worked (either when services are suspended for the general public or by voluntary action of the employee, such as working extra hours in work weeks shortened by holidays, vacations, illness or other absences so that such make up time does not result in any event in the employee does not work working more than forty hours in any work week) rather than charging it to leave.

There are very few opportunities for such time to be made up without the employee working more than forty hours during a work week. Since the opportunity to make up the time lost is a benefit for the employee, it will be permissible, therefore, for such makeup time to occur in excess of forty hours in a workweek without the time being subject to overtime compensation, provided that the employee has requested the opportunity to make up lost time subject to the condition that overtime compensation will not be made. Since hours worked in excess of 40 during a workweek would constitute overtime under Federal regulations, it will be necessary for make-up time for employees subject to overtime compensation to be limited to the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holidays, vacation, sick leave, civil leave, etc. Time must be made up within 12 months from the occurrence of the absence. If it is not made up within 12 months, vacation leave must be charged, or leave without pay taken.

(d) Special Provision. When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, or floods, and it becomes necessary for authorities to order evacuation from the place of employment, the following provisions will prevail:

(1) Employees who are required to evacuate will not be required to make up time that is lost from work during the period officially declared hazardous to life and safety. Employees required to remain at work may be relieved administratively for a period of time necessary to assure the safety of their family.

(2) Employees required to work in such emergency situations will be paid in accordance with the State's policy on Hours of Work and Overtime Compensation. Every effort should be made to compensate overtime by additional payment rather than compensatory time.

Statutory Authority G.S. 126-4(5), (10).

SUBCHAPTER II - SERVICE TO LOCAL GOVERNMENT

SECTION .0700 - APPOINTMENT AND SEPARATION

.0706 DEMOTION

A demotion is a change in classification to a lower level. Demotion or reassignment is a change in status resulting from assignment of a position to a lower classification level. It may result from the choice of the employee, reallocation of a position, inefficiency in performance, unacceptable conduct, reduction-in-force, or better utilization of individual resources. If the change results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. If the change results from a mutually agreed upon arrangement, the action is considered a reassignment. When an employee in permanent, probationary, or trainee status is demoted, it is expected that he will possess the minimum qualifications required for the new class at the respective level of appointment.

Statutory Authority G.S. 126-4.

.0707 SEPARATION

- (a)
- (3) For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service,

and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their initial six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0400 - SERVICE AWARDS PROGRAM

.0402 POLICY, SERVICE AWARDS PROGRAM

The service awards program is designed to recognize full-time and part-time (20 hours or more) permanent employees. On each fifth anniversary of employment with the State of North Carolina, the state will present the employee with an emblem mounted as fine jewelry. The two-piece design emblem is made of an antiqued yellow gold-filled crest mounted on a white gold base. Jewels on the design indicate the number of years of service; the designation being as follows:

five years of service . . . one ruby
10 years of service . . . two rubies
15 years of service . . . three rubies
20 years of service . . . three blue sapphires
25 years of service . . . three emeralds
30 years of service . . . one full-cut diamond
and two rubies
35 years of service . . . one full-cut diamond
and two emeralds
40 years of service . . . two full-cut diamonds
and one ruby
45 years of service . . . three full-cut diamonds
50 years of service . . . four full-cut diamonds

Statutory Authority G.S. 126-4.

.0406 ELIGIBILITY REQUIREMENTS

(a) Awards will be presented on the basis of an employee's ~~aggregate~~ total state service.

(b) ~~Aggregate~~ Total state service is the time ~~for~~ of full-time or part-time (half-time or over) permanent, trainee, probationary or provisional employment, whether subject to or exempt from the State Personnel Act. If a ~~permanent full-time~~ an employee so appointed is in pay status or is on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. ~~Permanent part-time employment is credited as aggregate service on a pro rata basis - it is computed as a percentage of the amount the employee would be credited if permanent full-time.~~

Statutory Authority G.S. 126-4(10).

.0407 ADDITIONAL CREDIT

Credit ~~for the aggregate~~ toward total state service ~~requirement also~~ shall also be given for the following:

- (1) employment with other governmental units which are now state agencies (Example: county highway maintenance forces, War Manpower Commission, judicial system);
- (2) authorized military leave from any of the governmental units for which service credit is granted, provided the employee is reinstated within the time limits outlined in the state military leave policies;
- (3) employment with the county agricultural extension service, community college system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year;
- (4) employment with a local mental health, public health, social services, or emergency management agency in North Carolina if such employment is subject to the State Personnel Act;
- (5) employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted; and the full legislative terms of the members.

Statutory Authority G.S. 126-4(10).

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

EFFECTIVE: January 1, 1989

AGENCY		ACTION TAKEN	
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC 34	.0102	Amended
		.0204	Repealed
		.0301 - .0302	Amended
		.0309	Amended
		.0317 - .0318	Amended
		.0321	Amended
		.0325	Amended
		.0328	Amended
		.0401 - .0402	Amended
		.0405	Amended
		.0501	Amended
		.0503	Amended
		.0505	Amended
		.0601	Amended
		.0603 - .0605	Amended
		.0701 - .0703	Amended
		.0803	Amended
		.0805 - .0806	Amended
		.0902	Amended
		.0904	Amended
		.1001	Amended
		.1103	Amended
	48A	.0611	Amended
	52B	.0207	Amended
	52C	.0105	Adopted
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC 3A	.0101 - .0102	Amended
		.0201 - .0202	Amended
		.0203	Repealed
		.0204 - .0205	Adopted
		.0301 - .0302	Amended
		.0501 - .0502	Amended
		.0601 - .0602	Amended
		.0603 - .0604	Repealed
		.0605	Amended
		.0606	Repealed
		.0607 - .0608	Amended
		.0609 - .0610	Adopted
		.0701 - .0703	Repealed
		.0801 - .0804	Adopted
		.0901 - .0902	Adopted
		.1001 - .1002	Adopted
		.1101 - .1102	Adopted
		.1201 - .1203	Adopted
	3R	.1003	Amended
	10A	.2115	Amended
		.2117	Repealed
		.2120	Repealed

LIST OF RULES AFFECTED

	.2121 - .2124	Amended
	.2126 - .2131	Amended
	.2132	Repealed
14C	.0704	Amended
	.0709	Amended
15A	.0601 - .0607	Adopted
18A	.0131	Amended
30	.0214	Amended
42C	.2401	Amended
45H	.0202	Amended
	.0205	Amended
49B	.0304	Amended
	.0306	Amended

DEPARTMENT OF INSURANCE

11	NCAC 10	.0202 - .0209	Repealed
		.0301 - .0304	Repealed
		.0306	Amended
		.0308	Amended
		.0312	Repealed
		.0402	Amended
		.0404 - .0405	Repealed
		.0501 - .0505	Repealed
		.0601 - .0603	Amended
		.0604	Repealed
		.0701	Amended
		.0703 - .0705	Amended
		.0801 - .0804	Amended
		.0805	Repealed
		.0806	Adopted
		.0901 - .0903	Amended
		.0905	Repealed
		.0906 - .0907	Adopted
		.1001 - .1003	Amended
		.1005	Repealed
		.1006 - .1007	Adopted
		.1101 - .1103	Adopted
		.1106	Adopted
		.1201 - .1207	Adopted
		.1301 - .1302	Adopted
		.1401 - .1402	Adopted
11E	.0110	Adopted	

DEPARTMENT OF JUSTICE

12	NCAC 10A	.0101 - .0105	Repealed
		.0201 - .0208	Repealed
		.0301 - .0302	Repealed
		.0401 - .0408	Repealed
		.0501 - .0503	Repealed
		.0601 - .0606	Repealed
		.0701 - .0705	Repealed
		.0801 - .0807	Repealed
		.0901 - .0903	Repealed
		.1001 - .1007	Repealed
		.1101 - .1104	Repealed
		.1201	Repealed
		.1301 - .1308	Repealed

LIST OF RULES AFFECTED

	.1401 - .1408	Repealed
	.1501	Repealed
	.1601	Repealed
10B	.0101 - .0104	Adopted
	.0105	Adopted
	.0201 - .0203	Adopted
	.0301 - .0308	Adopted
	.0401 - .0408	Adopted
	.0501 - .0509	Adopted
	.0601 - .0607	Adopted
	.0701 - .0707	Adopted
	.0801 - .0803	Adopted
	.0901 - .0909	Adopted
	.1001 - .1006	Adopted
	.1101 - .1105	Adopted
	.2001 - .2002	Adopted
	.2101 - .2105	Adopted

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC 7H	.1105	Amended
	7J	.0303	Amended
		.0409	Amended
		.0604	Adopted
	10B	.0115	Amended
	10C	.0407	Temp. Amended
			Expires 06-26-89
	10F	.0305	Amended
		.0313	Amended
		.0340	Amended
		.0352	Amended
	13L	.0907	Amended
	16C	.0113	Adopted
	16D	.0201	Amended

DEPARTMENT OF REVENUE

17	NCAC 1C	.0402	Amended
	6C	.0104	Amended

SECRETARY OF STATE

18	NCAC 6	.1701 - .1714	Temp. Adopted
			Expires 06-30-89
		.1801 - .1811	Temp. Adopted
			Expires 06-30-89

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21	NCAC 8G	.0402	Amended
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BOARD OF CHIROPRACTIC EXAMINERS

21	NCAC 10	.0202	Amended
		.0607 - .0608	Amended
		.0611	Adopted
		.0705	Repealed
		.0706	Amended

LIST OF RULES AFFECTED

BOARD OF COSMETIC ART EXAMINERS

21	NCAC 14A	.0101	Amended
		.0102	Repealed
		.0103 - .0105	Amended
	14B	.0101 - .0102	Amended
		.0105	Amended
		.0107	Amended
		.0201	Amended
		.0302	Amended
		.0303	Repealed
		.0304 - .0305	Amended
		.0308 - .0309	Amended
		.0501 - .0503	Amended
		.0506	Amended
		.0507	Repealed
		.0601	Amended
		.0602	Repealed
	14C	.0101	Amended
		.0103	Amended
		.0203	Amended
		.0205	Amended
		.0401 - .0402	Repealed
		.0503	Amended
		.0504	Repealed
		.0601	Amended
		.0602	Repealed
		.0801 - .0803	Amended
		.0805	Amended
		.0806	Repealed
		.0807 - .0808	Amended
		.0903	Amended
		.0907 - .0908	Amended
	14D	.0101	Amended
		.0103 - .0104	Amended
		.0302 - .0303	Amended
		.0305 - .0307	Amended
		.0310	Amended
	14F	.0004	Amended
		.0007 - .0008	Amended
		.0010	Amended
		.0012	Amended
	14G	.0001	Amended
		.0003 - .0004	Amended
		.0006 - .0016	Amended
		.0017	Adopted
	14H	.0001 - .0002	Amended
		.0003 - .0004	Repealed
		.0005	Amended
		.0006	Repealed
		.0007	Amended
		.0010	Amended
		.0012 - .0016	Amended
		.0018	Amended
	14I	.0101	Amended
		.0103 - .0109	Amended
		.0201 - .0205	Amended
		.0301 - .0303	Amended
	14J	.0101 - .0106	Amended

LIST OF RULES AFFECTED

		.0201 - .0206	Amended
		.0301	Repealed
		.0302 - .0303	Amended
		.0304 - .0305	Repealed
		.0401	Amended
		.0403	Amended
	14K	.0002	Amended
		.0004 - .0006	Amended
<u>MIDWIFERY JOINT COMMITTEE</u>			
21	NCAC 33	.0003	Amended
<u>BOARD OF NURSING</u>			
21	NCAC 36	.0219	Amended
		.0223	Amended
		.0301 - .0304	Amended
		.0309 - .0310	Amended
		.0315	Amended
		.0316	Repealed
		.0317 - .0318	Amended
		.0319	Repealed
		.0320	Amended
<u>COMMUNITY COLLEGES</u>			
23	NCAC 2E	.0602	Amended
<u>OFFICE OF STATE PERSONNEL</u>			
25	NCAC 1C	.0302	Amended
		.0402	Amended
	1D	.0105	Temp. Amended
		.0202	Expires 06-29-89
		.0205	Temp. Amended
		.0208	Expires 06-29-89
		.0210	Temp. Amended
		.0302	Expires 06-29-89
		.0505	Amended
		.1003	Amended
		.1005	Temp. Amended
		.1115	Expires 06-29-89
		.1202 - .1204	Temp. Amended
		.1401	Expires 06-29-89
		.1602	Amended
		.1901 - .1923	Amended
		.1924 - .1929	Repealed
		.1931	Adopted
		.1933 - .1934	Adopted
		.1936 - .1938	Adopted
		.1942 - .1944	Adopted
		.1946 - .1950	Adopted

LIST OF RULES AFFECTED

	.2001 - .2004	Adopted
1E	.0203	Temp. Amended
		Expires 06-29-89
	.0204	Amended
	.0210	Temp. Amended
		Expires 06-29-89
	.0301	Temp. Amended
		Expires 06-29-89
1I	.0102	Amended
	.0201	Amended
	.0203	Amended
	.0305	Amended
	.0310 - .0311	Amended
	.0313 - .0315	Amended
	.0401 - .0402	Amended
	.0501	Amended
	.0605	Amended
	.0702	Amended
	.0704 - .0707	Amended
	.1005	Amended
	.1007	Amended
	.1009	Amended
	.1012	Amended
	.1202 - .1203	Amended
	.1206	Amended
	.1208 - .1210	Amended
	.1312 - .1314	Amended
	.1405 - .1406	Amended
	.1408 - .1409	Amended
	.1413	Amended
	.1507	Amended
	.1602	Amended
1J	.0406 - .0408	Temp. Amended
		Expires 06-29-89
	.0408	Amended
	.0605	Amended
	.0610 - .0612	Amended
	.0701	Amended
	.0801 - .0806	Adopted
	.0808 - .0809	Adopted
1K	.0212	Amended
	.0502	Amended
	.0605 - .0607	Amended
	.0609 - .0610	Amended
	.0705	Amended
1N	.0001	Amended

OFFICE OF ADMINISTRATIVE HEARINGS

26	NCAC	1	.0001	Amended
		2A	.0205	Amended
			.0210	Amended
			.0211 - .0212	Adopted
			.0302	Amended
			.0403	Amended
			.0405	Amended
		2B	.0104	Amended
			.0203	Amended
		3	.0001 - .0002	Amended

LIST OF RULES AFFECTED

.0014
.0026

Amended
Amended

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
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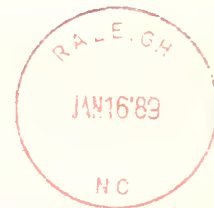
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