

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE.....

EXECUTIVE ORDERS

FINAL DECISION LETTER

PROPOSED RULES

Environment, Health, and Natural Resources

Human Resources

Insurance

Secretary of State

FINAL RULES

Correction

List of Rules Codified

ARRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

ISSUE DATE: APRIL 15, 1991

Volume 6 • Issue 2 • Pages 45-99



RECEIVED
APR 18 1991
LAW LIBRARY

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 27447, Raleigh, N. C. 27611-7447, 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 size, 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 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 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, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

NORTH CAROLINA REGISTER



*Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, NC 27611-7447
(919) 733 - 2678*

Julian Mann III,
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

ISSUE CONTENTS

I. EXECUTIVE ORDERS

Executive Orders 135-138.....45

II. FINAL DECISION LETTER

Voting Rights Act.....48

III. PROPOSED RULES

**Environment, Health, and
Natural Resources**

Wildlife Resources
Commission84

Human Resources

Aging, Division of72
Mental Health, Developmental
Disabilities and Substance
Abuse Services49

Insurance

Special Services Division84

Secretary of State

Securities Division85

IV. FINAL RULES

Correction

Division of Prisons.....87

List of Rules Codified.....89

V. ARRC OBJECTIONS.....93

VI. RULES INVALIDATED BY

JUDICIAL DECISION.....96

VII. CUMULATIVE INDEX98

NORTH CAROLINA REGISTER

Publication Schedule

(April 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
04/15/91	03/22/91	04/01/91	05/15/91	08/01/91
05/01/91	04/10/91	04/17/91	05/31/91	09/01/91
05/15/91	04/24/91	05/01/91	06/14/91	09/01/91
06/03/91	05/10/91	05/17/91	07/03/91	10/01/91
06/14/91	05/23/91	05/31/91	07/14/91	10/01/91
07/01/91	06/10/91	06/17/91	07/31/91	11/01/91
07/15/91	06/21/91	06/28/91	08/14/91	11/01/91
08/01/91	07/11/91	07/18/91	08/31/91	12/01/91
08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92
01/02/92	12/09/91	12/16/91	01/31/92	05/01/92
01/15/92	12/20/91	12/31/91	02/14/92	05/01/92
02/03/92	01/10/92	01/17/92	03/04/92	06/01/92
02/14/92	01/24/92	01/31/92	03/15/92	06/01/92
03/02/92	02/10/92	02/17/92	04/01/92	07/01/92
03/16/92	02/24/92	03/02/92	04/15/92	07/01/92
04/01/92	03/11/92	03/18/92	05/01/92	08/01/92
04/15/92	03/25/92	04/01/92	05/15/92	08/01/92
05/01/92	04/10/92	04/17/92	05/31/92	09/01/92
05/15/92	04/24/92	05/01/92	06/14/92	09/01/92
06/01/92	05/11/92	05/18/92	07/01/92	10/01/92
06/15/92	05/25/92	06/01/92	07/15/92	10/01/92
07/01/92	06/10/92	06/17/92	07/31/92	11/01/92
07/15/92	06/24/92	07/01/92	08/14/92	11/01/92
08/03/92	07/13/92	07/20/92	09/02/92	12/01/92
08/14/92	07/24/92	07/31/92	09/13/92	12/01/92
09/01/92	08/11/92	08/18/92	10/01/92	01/01/93
09/15/92	08/25/92	09/01/92	10/15/92	01/01/93
10/01/92	09/10/92	09/17/92	10/31/92	02/01/93
10/15/92	09/24/92	10/01/92	11/14/92	02/01/93
11/02/92	10/12/92	10/19/92	12/02/92	03/01/93
11/16/92	10/23/92	10/30/92	12/16/92	03/01/93
12/01/92	11/06/92	11/13/92	12/31/92	04/01/93
12/15/92	11/24/92	12/01/92	01/14/93	04/01/93

* 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.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 135 RESCISSION OF EXECUTIVE ORDERS NUMBER 88 AND NUMBER 102 COLUMBUS VOYAGES QUINCENTENARY COMMISSION

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

The Columbus Voyages Quincentenary Commission is hereby dissolved, and Executive Orders Number 88 and Number 102 are hereby rescinded.

This order shall be effective immediately.

Done in Raleigh, North Carolina this the 19th day of March, 1991.

EXECUTIVE ORDER NUMBER 136 ESTABLISHING THE NORTH CAROLINA ADVISORY COUNCIL ON TELECOMMUNICATIONS IN EDUCATION

WHEREAS, to solve the problems of education we must use all available resources and technologies to their fullest extent; and

WHEREAS, the use of telecommunications can rapidly increase our ability to reach those in need of special courses and technical training; and

WHEREAS, the educational problems in our State require that educators develop or coordinate a plan for the use of telecommunications;

THEREFORE, by the authority vested in me as Governor by the Constitution and Laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the North Carolina Advisory Council on Telecommunications in Education.

Section 2. Membership. The Advisory Council shall be composed of the following members:

1. The President of the University of North Carolina System;
2. The President of the Department of Community Colleges;
3. The Superintendent of the Department of Public Instruction;
4. The Secretary of the Department of Administration;

5. The Secretary of the Department of Correction;
6. The Senior Education Advisor to the Governor;
7. The Education Advisor to the Governor;
8. The State Controller; and
9. The President of the Microelectronics Center of North Carolina.

Any member may designate a representative to participate in Advisory Council business in the event that such member is unable to participate in person.

The Advisory Council may call upon experts in the fields of education and telecommunications for information and advice.

Section 3. Chairman and Meetings. The Secretary of the Department of Administration shall serve as Chairman. The Advisory Council shall meet at least once per quarter at the call of the Chairman.

Section 4. Purposes. The Advisory Council shall perform the following duties:

- a. develop a long-range plan to be presented to the Governor for the use of technology in public schools, universities, community colleges, homes, and prisons across the State; and
- b. coordinate efforts for the efficient use of telecommunications in education.

Section 5. Administrative Support and Expenses. Administrative support for the Advisory Council shall be provided by the Office of the Governor. No member shall be entitled to a per diem allowance. Reimbursement for actual expenses may be paid out of funds appropriated to the Office of the Governor.

Section 6. Semiannual Reports. The Advisory Council shall submit a semiannual report to the Governor on its findings and progress.

Section 7. Effective Date and Expiration. This Executive Order shall be effective immediately and shall expire two years from this date, unless amended or extended by further Executive Order of the Governor.

Done in Raleigh, North Carolina, this the 20th day of March, 1991.

**EXECUTIVE ORDER NUMBER 137
ESCROWING CONTRIBUTIONS TO THE
TEACHERS' AND STATE EMPLOYEES'
RETIREMENT SYSTEM**

Shortfalls and possible shortfalls in the State's revenue collections for fiscal year 1990-91, require that the State conserve its cash resources whenever the same can be done without impairing either the services rendered by the State or the compensation paid to the State's employees who render the services.

Appropriated but unpaid contributions to the Teachers' and State Employees' Retirement System are authorized contributions by the State to the System but are not "funds" of the Teachers' and State Employees' Retirement System, as that word is used in Article V, Sec. 6(2) of the Constitution. Like other appropriations, appropriations to the Teachers' and State Employees' Retirement System are subject to the directive given the Governor by Article III, Sec. 5(3) of the Constitution, to avoid deficits by effecting economies in State expenditures.

Actuarial studies based on assumptions that I find acceptable show that the amounts of the State's past contributions to the Teachers' and State Employees' Retirement System have been such that the State's contributions to the System for the months of January through June, 1991, can be foregone without impairing either the current or future retirement, disability or death benefits to which retirees are entitled under present law.

THEREFORE, to the end that the State's cash resources may be sufficient to meet the State's needs for cash for the balance of FY 1990-91 and pursuant to authority granted to me by Article III, Sec. 1 and 5(3) of the Constitution, N.C.G.S. §§143A-4 and §§143B-4 and the Executive Budget Act, it is **ORDERED**:

Section 1. The State's agencies shall not make contributions to the Teachers' and State Employees' Retirement System for the months of January through June 1991.

Section 2. The Office of State Budget and Management shall escrow in a special account within the Treasury, cash in an amount equal to 2.3% and 0.16% of the compensation paid by

the State to members of the Teachers' and State Employees' Retirement System for the months of January through June, 1991. If and at such time prior to June 30, 1991, it is found necessary to use some or all of the cash so escrowed to keep the State from incurring a deficit as defined in Article III, Sec. 5(3) of the Constitution, so much of the escrowed cash as shall be needed therefor shall be transferred to the General Fund. All cash remaining in the Escrow Fund on June 30, 1991, if any, shall be paid to the Trustees of the Teachers' and State Employees' Retirement System before the close of that business day as the State's contribution to the Fund for the period January 1 through June 30, 1991.

Section 3. This Executive order shall be effective immediately and remain in effect until rescinded or the beginning of the business day July 1, 1991, whichever is earlier.

Done in Raleigh, North Carolina this 22nd day of March, 1991.

**EXECUTIVE ORDER NUMBER 138
AMENDING EXECUTIVE ORDER NUMBER 137**

Section 1. Executive order No. 137 is amended to read as follows:

**"EXECUTIVE ORDER NO. 137
ESCROWING CONTRIBUTIONS TO THE
TEACHERS' AND STATE EMPLOYEES'
RETIREMENT SYSTEM**

"Shortfalls and possible shortfalls in the State's revenue collections for fiscal year 1990-91, require that the State conserve its cash resources whenever the same can be done without impairing either the services rendered by the State or the compensation paid to the State's employees who render the services.

"Appropriated but unpaid contributions to the Teachers' and State Employees' Retirement System are authorized contributions by the State to the System but are not 'funds' of the Teachers' and State Employees' Retirement System, as that word is used in Article V, Sec. 6(2) of the Constitution. Like other appropriations, appropriations to the Teachers' and State Employees' Retirement System are subject to the directive given the Governor by Article III, Sec. 5(3) of the Constitution, to avoid deficits by effecting economies in State expenditures.

"Actuarial studies based on assumptions that I find acceptable show that the amounts of the

State's past contributions to the Teachers' and State Employees' Retirement System have been such that the State's contributions to the System for the months of January through June, 1991, may be reduced as hereinafter provided without impairing either the current or future retirement, disability or death benefits to which retirees are entitled under present law.

"**THEREFORE**, to the end that the State's cash resources may be sufficient to meet the State's needs for cash for the balance of FY 1990-91 and pursuant to authority granted to me by Article III, Secs. 1 and 5(3) of the Constitution, N.C.G.S. §§143A-4 and §§143B-4 and the Executive Budget Act, it is **ORDERED**:

"Section 1. If hereafter found by me to be necessary to enable the State to meet its needs for cash for the remainder of FY 1990-91 and thereby avoid a deficit as defined in Article III, Sec. 5(3) of the Constitution, the State's agencies' contributions to the Teachers' and State Employees' Retirement System for the months of January through June 1991, shall be reduced as provided in Section 2, hereof.

"Section 2. The Office of State Budget and Management shall escrow cash in an amount equal to 2.3% and 0.16% of the compensation paid by the State to members of the Teachers' and State Employees' Retirement System for the months of January through June, 1991. If and

at such time prior to June 30, 1991, it is found by me to be necessary to use some or all of the cash so escrowed to keep the State from incurring a deficit as defined in Article III, Sec. 5(3) of the Constitution, so much of the escrowed cash as shall be needed therefor shall be transferred to the General Fund. All cash remaining in the Escrow Fund on June 30, 1991, if any, shall be paid to the Trustees of the Teachers' and State Employees' Retirement System before the close of that business day as the State's contribution to the Fund for the period January 1 through June 30, 1991.

"Section 3. This Executive Order shall be effective immediately and remain in effect until rescinded or the beginning of the business day July 1, 1991, whichever is earlier.

Done in Raleigh, North Carolina this 22nd day of March, 1991."

Section 2. Executive Order No. 137, as amended, is republished and reaffirmed in its entirety.

Section 3. This Executive Order is effective immediately.

Done in Raleigh, North Carolina this 28th day of March, 1991.

VOTING RIGHTS ACT FINAL DECISION LETTER

[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

JRD:MAP:TGL:rac
DJ 166-012-3
91-0116

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

March 4, 1991

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

Dear Mr. McCarley:

This refers to the four annexations [Ordinance Nos. 2258, 2259, 2260 and 2261 (1990)] and the designation of the annexed areas to districts 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 January 15, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14K .0103, .0314 - .0315; 18L .1522.

The proposed effective date of this action is October 1, 1991.

The public hearing will be conducted at 10:00 a.m. on May 15, 1991 at the Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604-1159, Public Hearing Room - Ground Floor.

Comment Procedures: Any interested person may present his comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-4774 by May 14, 1991. 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 14K - CORE LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES: AND SUBSTANCE ABUSE FACILITIES

SECTION .0100 - GENERAL INFORMATION

.0103 DEFINITIONS

(c) The following terms shall have the meanings specified:

(11) "Atypical development" in children means those from birth to 60 months of age who demonstrate significantly atypical behavioral socioemotional, motor, or sensory development as manifested by:

(A) ~~Diagnosed~~ diagnosed hyperactivity, attention deficit disorder or other behavioral disorders; or

(B) ~~Identified~~ identified emotional or behavioral disorders such as:

(i) delay or abnormality in achieving expected emotional milestones, such as attachment, parent-child interaction, pleasurable interest in adults and peers,

ability to communicate emotional needs, and ability to tolerate frustrations;

(ii) persistent failure to initiate or respond to most social interactions;

(iii) fearfulness or other distress that does not respond to comforting by caregivers;

(iv) indiscriminate sociability, e.g. excessive familiarity with relative strangers;

or
(v) self-injurious or unusually aggressive behavior; or

(C) ~~Substantiated~~ substantiated physical abuse, sexual abuse, or other environmental situations that raise significant concern regarding the child's emotional well-being.

(23) "Developmentally delayed children" means those whose development is delayed in one or more of the following areas: cognitive development, physical development, including vision and hearing, language or speech, self-help and psychosocial skills. The specific level of delay must be:

(A) for children from birth to 36 months of age, documented by scores ~~1 1/2~~ one and one-half standard deviations below the mean on standardized tests in at least one of the above areas of development. Or, it may be documented by a 20 percent delay on assessment instruments that yield scores in months; and

(B) for children from 36 to 60 months of age, documented by test performance two ~~standardized~~ standard deviations below the mean on standardized tests in one area of development or by performance that is one standard deviation below the norm in two areas of development. Or, it may be documented by a 25 percent delay in two areas on assessment instruments that yield scores in months.

(39) "High risk children" means those from birth to 36 months of age ~~who:~~

~~(A) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay or atypical development;~~

~~(B) have significant atypical patterns of development (perceptual, sensory, physical, behavioral, motor anomalies) that have a high probability of resulting in developmental delay or atypical development; or~~

~~(C) have responded well to intervention efforts but for whom there is evidenced that their continued developmental progress~~

cannot be assured without continued intervention.

for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be necessary. There are two categories of high risk children. These are:

(A) High Risk-Established: Diagnosed or documented, physical or mental conditions, which are known to result in developmental delay or atypical development as the child matures. Such conditions are limited to the following:

- (i) chromosomal anomaly or genetic disorders associated with developmental deficits;
- (ii) metabolic disorders associated with developmental deficits;
- (iii) infectious diseases associated with developmental deficits;
- (iv) neurologic disorders;
- (v) congenital malformations;
- (vi) sensory disorders; or
- (vii) toxic exposure.

(B) High Risk-Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or postneonatal risk conditions as defined in the publication, "NORTH CAROLINA CHILD SERVICE COORDINATION PROGRAM" available from the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources, PO Box 27687, Raleigh, NC 27611-7687, adopted in accordance with G.S. 150B-14(c). These conditions are as follows:

- (i) maternal age less than 15 years;
- (ii) maternal PKU;
- (iii) mother HIV positive;
- (iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;
- (v) parental blindness;
- (vi) parental substance abuse;
- (vii) parental mental retardation;
- (viii) parental mental illness;
- (ix) difficulty in bonding between parent and infant;
- (x) difficulty in providing basic parenting;
- (xi) lack of stable housing;

- (xii) lack of familial and social support;
- (xiii) family history of childhood deafness;
- (xiv) maternal hepatitis B;
- (xv) birth weight less than 1500 grams;
- (xvi) gestational age less than 32 weeks;
- (xvii) respiratory distress (mechanical ventilator greater than six hours);
- (xviii) asphyxia;
- (xix) hypoglycemia (less than 25 mg/dl);
- (xx) hyperbilirubinemia (greater than 20 mg/dl);
- (xxi) intracranial hemorrhage;
- (xxii) neonatal seizures;
- (xxiii) major congenital anomalies;
- (xxiv) CNS infection or trauma;
- (xxv) congenitally acquired infection;
- (xxvi) suspected visual impairment;
- (xxvii) suspected hearing impairment;
- (xxviii) no well child care by age six months;
- (xxix) failure on standard developmental or sensory screening test;
- (xxx) significant parental concern; and
- (xxxi) suspected abuse or neglect.

Statutory Authority G.S. 122C-26; 130A-144; 130A-152; 143B-147.

SECTION .0300 - FACILITY AND PROGRAM MANAGEMENT

.0314 ASSESSMENT

(a) The governing body shall develop written policies and procedures relative to assessment requirements for individuals served by the facility.

(b) Mental Health Facilities:

(1) Inpatient psychiatric, residential acute treatment, partial hospitalization, residential treatment for children and youth, and day treatment facilities for children and youth shall complete:

- (A) ~~An~~ an individual admission assessment within 24 hours of admission, including mental status, admitting diagnosis, and determination of need for additional information, diagnostic tests or evaluations;
- (B) ~~A~~ a preliminary individual treatment plan within 72 hours of admission; and
- (C) ~~Current~~ current social, medical, psychiatric, educational and vocational histories and assessments such as substance abuse, developmental, legal, nutritional, etc., completed or obtained within 30 days, if appropriate.

(2) Psychosocial rehabilitation programs and group homes for adult and elderly clients shall complete an admission note within

24 hours for each client who is admitted to the facility. The admission note shall include the present condition of the client reported in objective, behavioral terms; the name of the mental health professional who is responsible for the treatment and case management of the client; and the reason for admission.

(c) Developmental Disabilities Facilities and Sheltered Workshops:

(1) Within 30 days following admission, the following assessment information shall be completed:

(A) the present condition of the client reported in objective, behavioral terms, and where possible a description of the client's condition by family members; ~~For all facilities serving infants, toddlers and preschool age children, except those providing respite services, the assessment of levels of physical, including vision and hearing, language and speech, cognitive, psychosocial and self-help skills development shall be completed. There shall be a determination of the child's unique needs in terms of these areas of development and identification of services appropriate to meet those needs. Also, for all facilities serving infants, toddlers and preschoolers except for respite, the assessment process shall include, if the family so desires, a determination of the strengths and needs of the family related to enhancing the development of the child. The family focused assessment shall be based on information provided through a personal interview and incorporate the family's description of the strengths and needs. The assessment process shall include procedures for ensuring participation by the client's family or the legally responsible person;~~

(B) social, developmental and medical histories and assessments. Additional histories and assessments shall be completed as appropriate (e.g., vocational, psychiatric, legal, educational and nutritional). Histories and assessments generated by other facilities or service providers may be used for respite programs;

(C) determination of, and request for, additional referrals for special diagnostic tests, assessments or evaluations, if needed;

(D) results of other standardized and non-standardized evaluations in the areas identified in Subparagraph (c)(1)(B) of this Rule;

(E) summary of client and, if appropriate, family strengths and weaknesses;

(F) copies of relevant evaluations from other agencies or service providers.

(2) An ADAP which operates within a sheltered workshop that meets the requirements of the Division of Vocational Rehabilitation Services shall be considered to have an approved ADAP evaluation program which may provide the information for the evaluation report.

(3) No more than 30 days prior to admission to a facility, a medical assessment shall be completed indicating the client's ability to participate in the program, presence of a communicable disease or a communicable condition that presents a significant risk for transmission within the facility, and compliance with the immunization requirements in G.S. 130A-152. If the client has specific medical problems, the physician's assessment shall include a written statement regarding management of the client, including control measures required for communicable diseases and conditions by G.S. 130A-144. The physician's assessment shall be updated at least annually during the client's placement in the facility except for ADAP, alternative family living and supervised independent living.

~~(4) For all facilities serving infants, toddlers and preschoolers except for respite:~~

~~(A) tests and other evaluation materials and procedures shall be administered in the native language of the parents or other mode of communication unless it is clearly not feasible to do so;~~

~~(B) any assessment procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;~~

~~(C) no single procedure shall be used as the sole criterion for determining a child's eligibility under this part;~~

~~(D) assessments shall be carried out by professionals privileged according to procedures outlined in the Division's publication, "REGULATIONS FOR PRIVILEGING PROFESSIONALS WORKING WITH INFANTS AND TODDLERS WITH OR AT RISK FOR DEVELOPMENTAL DELAY OR ATYPICAL DEVELOPMENT", APSM 120-1 (01/01/89) or comparable procedures approved by the Division;~~

~~(E) the assessment process shall be a multidisciplinary one and reflect the in-~~

involvement of two or more disciplines or professions with the specific number and types of disciplines determined by the needs of the particular child;

(F) the evaluation process must be based on informed clinical opinion;

(G) the assessment process shall be completed within 45 calendar days from the date of referral; and

(H) the child's family or legally responsible person shall be fully informed of the results of the assessment process.

(d) For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite, there shall be:

(1) an assessment of levels of physical, (including vision and hearing), language and speech, cognitive, psychosocial and self-help skills development;

(2) a determination of the child's unique needs in terms of these areas of development and identification of services appropriate to meet those needs;

(3) if requested by the family, a determination of the strengths and needs of the family related to enhancing the development of the child. The family focused assessment shall be based on information provided through a personal interview and incorporate the family's description of the strengths and needs;

(4) procedures developed and implemented to ensure participation by the client's family or the legally responsible person;

(5) tests and other evaluation materials and procedures administered in the native language of the parents or other mode of communication unless it is clearly not feasible to do so;

(6) assessment procedures and materials which are selected and administered so as not to be racially or culturally discriminatory;

(7) no single procedure used as the sole criterion for determining a child's eligibility under this Paragraph;

(8) an integrated assessment process which involves at least three persons, each representing a different discipline or profession, with the specific number and types of disciplines based on the particular needs of the child. One of the disciplines shall include a physician, physician's assistant or nurse practitioner;

(9) an evaluation process based on informed clinical opinion;

(10) an assessment process completed within 45 calendar days from the date of referral. The referral is initiated by a written request for these services made to any one of the public agencies participating in the PL 99-457 Interagency Agreement. The request becomes a referral when the area program determines that all of the following is available:

(A) the family's written consent to receive this service;

(B) sufficient background information to enable the agency receiving the referral to establish communication through a telephone call or home visit;

(C) reason for referral, date of referral and agency or individual making referral;

(D) child and family identifying information such as names, child's birthdate and primary physician; and

(E) summary of any pre-existing child and family screening or assessment information;

(11) a 45 calendar day completion requirement which may be extended in exceptional circumstances, such as, the child's health assessment is being completed out-of-state, or family desires make it impossible to complete the assessment within the time period. The specific nature and duration of these circumstances which prevent completion within 45 days and the attempts made by the provider to complete the assessment shall be documented; and

(12) the child's family or legally responsible person shall be fully informed of the results of the assessment process.

(e) ~~(4)~~ Substance Abuse Facilities:

(1) Substance abuse facilities, with the exception of supervised independent living, alternative family living and halfway houses, shall conduct an assessment of the client after admission as follows:

(A) admission assessment to be done within 24 hours of admission which includes reason for admission, mental status including suicide potential, admitting diagnosis, medical history and general physical condition, activities assessment, history of or assessment of potential for physical abuse of family members or others, a family assessment when minors are served, legal status and substance use history;

(B) in inpatient hospital treatment, residential treatment or rehabilitation, non-hospital medical detoxification, and

outpatient detoxification facilities, a medical examination shall be completed within 24 hours of admission; and

- (C) except in detoxification facilities, historical material including social, legal, psychiatric, educational and vocational assessments shall be completed within 30 days of admission.
- (2) In halfway houses, a thorough review shall be made to determine appropriateness of continued service in the facility within 30 days of admission and at least every three months thereafter.
- (f) ~~(e)~~ Facilities Serving More Than One Disability (except for sheltered workshops):
 - (1) An admission note shall be completed for each client within 24 hours of admission which includes at least the following:
 - (A) the present condition of the client reported in objective, behavioral terms;
 - (B) the reason for admission; and
 - (C) the name of the qualified mental health professional, qualified developmental disabilities professional or qualified substance abuse professional as appropriate, who has designated responsibility for the client's treatment, program or case management plan.
 - (2) The facility shall obtain assessment information judged to be essential to serving the client in the facility, from the qualified mental health professional, qualified developmental disabilities professional or qualified substance abuse professional who has designated responsibility for the client's treatment, program or case management plan.
 - (3) Any other assessment information required by the facility's own policies shall be completed or obtained as required by those policies.

Statutory Authority G.S. 122C-26; 130A-144; 130A-152; 143B-147.

.0315 INDIVIDUAL TREATMENT/PROGRAM PLAN

- (a) The governing body shall have written policies and procedures for the development of individual treatment and program plans and the assignment of staff responsibilities for implementation of such plans.
- (b) Individual plans for each client shall be based upon an evaluation of the client's condition, assets and needs and the resources to meet these needs. This plan shall provide a systematic approach to the treatment/habilitation of the client and substantiate the appropriateness of the

treatment or habilitation goals. The plan shall be developed in partnership with the client or individual acting in behalf of the client. Clinical responsibility for the development and implementation of the plan shall be designated.

(c) Mental Health Facilities:

- (1) Inpatient psychiatric, residential acute treatment, partial hospitalization, residential treatment for children and youth, and day treatment for children and youth facilities shall comply with the following requirements:
 - (A) A comprehensive treatment plan, based on information gathered during the assessment process, shall be developed in cooperation with the client and implemented within 30 days of admission, with the exception of inpatient psychiatric and residential acute treatment facilities wherein the plan shall be implemented within ten days of admission. The comprehensive plan shall include at least the following: diagnosis and time-specific short and long-term measurable goals, strategies for reaching goals and staff responsibility for plan implementation.
 - (B) Progress notes shall be completed on at least a weekly basis and reflect the client's progress or lack of progress toward meeting goals, staff interventions and information which may have a significant impact on the client's condition.
 - (C) A thorough review of the comprehensive treatment plan shall be carried out and documented in the plan at least every six months or more frequently if medically or clinically indicated.
- (2) Group homes for adult and elderly individuals who are mentally ill shall comply with the following requirements:
 - (A) Individual client plans shall be developed in cooperation with the client, the facility staff and the mental health professional who is responsible for the treatment or case management of the client within 30 days of the client's admission to the facility. The plan shall include at least the following: time-specific short and long-term goals to be addressed by the client and the facility staff; documentation of coordination of the plan for the client with the comprehensive treatment plan; ~~and~~ the designated treatment responsibilities of the mental health professional providing treatment; and the responsibilities of the facility staff.
 - (B) Progress notes shall be completed on a monthly basis which reflect the client's

progress or lack of progress toward meeting goals; documentation of coordination between the facility staff and the mental health professional who is responsible for treatment; and any other information which may have a significant impact on the client's condition.

- (C) A thorough review of the plan shall be carried out and documented in the plan at least annually or more frequently if medically or clinically indicated.
- (3) Psychosocial rehabilitation programs shall comply with the following requirements:
 - (A) A plan shall be developed in cooperation with the client within 30 days of the client's admission to the facility. The plan shall include at least the following:
 - (i) assessment of the client's strengths and weaknesses;
 - (ii) individual service goals and activities in which the client will participate; and
 - (iii) designation of staff responsibility for coordination with goals contained in the client's comprehensive treatment plan.
 - (B) Progress notes shall be completed on a monthly basis which document the client's progress toward goal achievement and other significant information regarding the client's situation.
 - (C) The plan shall be reviewed and changes documented at least every six months or more frequently if indicated based on client functioning.
- (4) Any facility which serves individuals on a drop-in basis shall maintain a daily attendance log, a daily activity plan, and documentation of referrals to other service providers.
- (d) Developmental Disabilities Facilities and Sheltered Workshops:
 - (1) Individual program plans shall be developed and implemented within 30 days of admission to all facilities with the exception of respite care programs. The plan shall be reviewed at least quarterly and assessed and redeveloped at least annually. For clients in ADAP-facility based models and sheltered workshop placements, the annual assessment shall include a review to determine the need for referral to Vocational Rehabilitation or other services. For clients in ADAP-Supported Employment-Long-Term Support, it shall include an indication of the level of need for long-term support activities and the specific type of support required. Program plans shall provide the basis for the

development of individual goal plans. Program plans shall provide a systematic approach to the habilitation of the client and substantiate the appropriateness of the habilitation goals. Program plans shall be developed in partnership with clients or individuals acting in behalf of clients. Clinical responsibility for the development and implementation of program plans shall be designated. ~~In addition, in facilities serving infants, toddlers or preschool age children, except for those providing respite services, the program plan is referred to as the Individualized Family Service Plan (IFSP) and shall include:~~

- ~~(A) a description of the child's present levels of physical development, including vision, hearing and health status, cognitive development, language and speech development, psychosocial development and self-help skills;~~
- ~~(B) with the concurrence of the family, a description of the family's strengths and needs related to enhancing the development of the child;~~
- ~~(C) goals for the child's family as well as goals for the child;~~
- ~~(D) criteria and timeframe to be used to determine progress towards goals;~~
- ~~(E) planned habilitation procedures related to the goals;~~
- ~~(F) a statement of the specific early intervention services to be provided to meet the identified child and family needs, and the initiation dates, frequency and method, duration, intensity and location of service delivery and the persons or agencies responsible;~~
- ~~(G) the designation of the staff member responsible for case management services;~~
- ~~(H) the plans for transition into services which are the responsibility of the N.C. Department of Public Instruction;~~
- ~~(I) the payment arrangements for the specific services delineated in Subparagraph (d)(1)(F); and~~
- ~~(J) a description of medical and other services that the child needs but which are not required under P.L. 99-157 and the strategies to be pursued to secure those services through public or private resources.~~
- (2) The initial development and annual review process for the IFSP for infants, toddlers and preschoolers shall include participation by:
 - (A) the parent or parents of the child;

- (B) other family members, as requested by the parent;
- (C) an advocate or person outside of the family if the parent requests that the person participate;
- (D) the provider of the early intervention services;
- (E) the case manager designated for the family if different; and
- (F) the provider of the assessment service if different.

The quarterly review process shall include participation by persons identified in Subparagraphs (d)(2)(A) through (F). If any of these individuals are unable to attend one of the referenced development or review meetings, arrangements shall be made for the person's involvement through other means such as participation in a telephone conference call, having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting.

- (3) The IFSP for infants, toddlers and preschoolers is based upon the results of the assessment referenced in 10 NCAC 14K .0314(c). However, early intervention services may commence before completion of this assessment if parental consent is obtained, the assessment is completed within the time period referenced in 10 NCAC 14K .0312(4)(c), and an interim IFSP is developed. The interim IFSP shall include:
 - (A) The name of the case manager who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;
 - (B) Short-term quarterly goals for the child and family when recommended;
 - (C) Those early intervention services that are needed immediately; and
 - (D) Suggested activities that may be carried out by the family members.
- (4) Each facility or individual who has a direct role in the provision of early intervention services specified in the IFSP is responsible for making a good faith effort to assist each eligible child in achieving the goals set forth in the IFSP.
- (5) The IFSP shall be developed within 45 days of referral for those children determined to be eligible.
- (6) Individual goal plans shall be developed in the appropriate developmental and vocational skill areas. Goal plans shall be assessed on a quarterly basis in all facilities with the exception of developmental disa-

bility and behavior disorder group homes wherein goal plans shall be assessed on a monthly basis. Such assessment shall address the client's progress or lack of progress toward meeting the plan and review of the plan for appropriateness of established goals. Individual goal plans are not required for clients in supervised independent living, alternative family living, sheltered workshops and ADAP clients in supported employment. Individual goal plans are also not required for ADAP clients targeted for supported employment or those in the intensive training period or the long-term support period of supported employment. To be targeted as a supported employment client, the client must have been determined in writing to be appropriate for supported employment by representatives of the facility, the local unit of the Division of Vocational Rehabilitation Services and the Area Developmental Disabilities Specialist of the Area Mental Health, Mental Retardation and Substance Abuse Program or his designee.

- (7) In specialized community residential centers, nursing care plans shall be developed and implemented in addition to the individual program plan. The nursing care plan must address medical needs and nursing care. Such plans shall be integrated with individual goal plans.
- (8) In developmental disability and behavior disorder group homes, the individual program plan shall specify a time-specific admission of less than six months, to be extended as needed on a six-month basis, and shall emphasize programming objectives that assist the client in exiting to a less restrictive setting.
- (9) Progress notes shall be completed which reflect the client's progress or lack of progress toward meeting program plan goals, staff interventions and any information which may have a significant impact on the client's condition. Documentation shall be made of any conferences or involvements with the client's family or involved agencies.
 - (A) Progress notes for respite services shall be completed after each respite episode.
 - (B) Progress notes for developmental disability and behavior disorder group homes shall be completed at least monthly.
 - (C) Progress notes in all other services shall be on at least a quarterly basis.

- (D) Except for respite services, when the client is a minor, progress reports regarding the program plan shall be given to the legally responsible person on a quarterly basis.
- (e) For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite:
- (1) there shall be a habilitation plan which is referred to as the Individualized Family Service Plan (IFSP) which shall include:
 - (A) a description of the child's present levels of physical (including vision and hearing), health status, language and speech, cognitive, psychosocial, and self-help skills development;
 - (B) the concurrence of the family, a description of the family's strengths and needs related to enhancing the development of the child;
 - (C) goals for the child, and, if requested, goals for the child's family;
 - (D) criteria and timeframes to be used to determine progress towards goals;
 - (E) planned habilitation procedures related to the goals;
 - (F) a statement of the specific early intervention services to be provided to meet the identified child and family needs, the initiation dates, frequency and method, duration, intensity and location of service delivery, and the persons or agencies responsible;
 - (G) the designation of the staff member responsible for service coordination;
 - (H) the plans for transition into services which are the responsibility of the N.C. Department of Public Instruction, when applicable;
 - (I) the payment arrangements for the specific services delineated in Subparagraph (e)(1)(F) of this Rule;
 - (J) a description of medical and other services needed by the child, but which are not required under P.L. 99-457, and the strategies to be pursued to secure those services through public or private resources.
 - (2) The IFSP shall be:
 - (A) reviewed on at least a semi-annual basis or more frequently upon the family's request; and
 - (B) revised as appropriate, but at least annually.
 - (3) The initial development and annual revision process for the IFSP for infants, toddlers and preschoolers shall include participation by:
 - (A) the parent or parents of the child;
 - (B) other family members, as requested by the parent;
 - (C) an advocate or person outside of the family if the parent requests that the person participate;
 - (D) the provider of the early intervention services;
 - (E) the service coordinator designated for the family, if different from the provider of the early intervention services; and
 - (F) the provider of the assessment service, if different from the provider of the early intervention services.

The semi-annual review process shall include participation by persons identified in Subparagraphs (e)(3)(A) through (E) of this Rule. If any of these individuals are unable to attend one of the development or review meetings, arrangements shall be made for the person's involvement through other means such as participation in a telephone conference call, having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting.
 - (4) The IFSP for infants, toddlers and preschoolers is based upon the results of the assessment referenced in 10 NCAC 14K .0314(c)(4). However, early intervention services may commence before completion of this assessment if parental consent is obtained, the assessment is completed within the time period referenced in 10 NCAC 14K .0314(c)(4), and an interim IFSP is developed. The interim IFSP shall include:
 - (A) the name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;
 - (B) goals for the child and family when recommended;
 - (C) those early intervention services that are needed immediately; and
 - (D) suggested activities that may be carried out by the family members.
 - (5) Each facility or individual who has a direct role in the provision of early intervention services specified in the IFSP is responsible for making a good faith effort to assist each eligible child in achieving the goals set forth in the IFSP.
 - (6) The IFSP shall be developed within 45 days of referral for those children determined to be eligible. The referral shall be as defined in 10 NCAC 14K .0314(d)(11).
- (f) ~~(e)~~ Substance Abuse Facilities:

- (1) The preliminary treatment plan or detoxification instructions shall be initiated within 24 hours of admission and shall be based upon information gathered during the admission assessment.
- (2) The comprehensive treatment plan for clients in therapeutic homes and outpatient treatment facilities shall be implemented within 30 days of admission. The comprehensive treatment plan for clients in inpatient hospital treatment programs and residential treatment/habilitation facilities shall be implemented within ten days of admission. Such plan shall include diagnosis, time-specific short and long-term measurable goals, and strategies for reaching goals. The treatment plan shall be reviewed and revised whenever medically or clinically indicated or at least every six months.
- (3) Progress notes shall be written to reflect the client's progress or lack of progress toward meeting the treatment plan goals and shall reflect staff interventions and any information which may have a significant impact on the client's status. Documentation shall be made of any conference or involvements with the client's family or involved agencies and any major events related to the client.
 - (A) Progress notes in outpatient services, including outpatient detoxification services, shall be completed after each client visit.
 - (B) Progress notes shall be completed weekly in residential treatment/habilitation facilities and therapeutic homes.
 - (C) Progress notes shall be completed on each client in social setting and nonhospital medical detoxification facilities at least every eight hours.
 - (D) In inpatient hospital treatment facilities, progress notes shall be completed on each shift.
 - (E) A weekly summary note shall be completed in halfway houses, supervised independent living and alternative family living.
- (g) ~~(f)~~ Facilities Serving More Than One Disability (except for sheltered workshops):
 - (1) An individual client plan for services to be provided by the facility shall be developed jointly by the client, facility staff and the qualified mental health professional, qualified developmental disabilities professional or the qualified substance abuse professional, as appropriate, who is re-

sponsible for the client's treatment, program or case management plan within 30 days of admission to the facility. This plan shall include at least the following:

- (A) ~~Specified~~ specified goals and strategies to be carried out by the facility staff to support the attainment of goals specified by the qualified mental health professional, qualified developmental disabilities professional or qualified substance abuse professional who has designated responsibility for the client's treatment, program or case management plan; and
 - (B) ~~Documentation~~ documentation of joint development of the individual client plan by the client or legally responsible person, the facility staff and the professional who has designated responsibility for the client's treatment, program or case management plan.
- (2) Progress notes shall be completed on at least a monthly basis which reflect:
 - (A) The client's progress or lack of progress in relation to his goals and strategies within the client plan; and
 - (B) Documentation of coordination between the facility and the professional who has designated responsibility for the client's treatment, program or case management plan.
 - (3) A thorough review of the individual client plan shall be carried out annually or more frequently if medically or clinically indicated. The review of the individual client plan shall be conducted cooperatively by the client or legally responsible person, the facility staff and the professional who has designated responsibility for the client's treatment, program or case management plan.

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

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS

SECTION .1500 - EARLY INTERVENTION SERVICES PROCEDURE SAFEGUARDS

.1522 WRITTEN CONSENT REQUIRED

Except as provided in Rule .1510 of this Section, all disclosures of confidential information, including disclosures between an area program and contract agency, may be made only with the written consent of the parents. Client information may be disclosed between agencies partic-

ipating in the provision of early intervention services in accordance with G.S. 122C-53(a), 122C-55(c), 122C-55(f), or 122C-55(h), as appropriate. However, the extent of information disclosed shall be limited to that information which is necessary to carry out the purpose of the disclosure. Parents shall be informed of their right to refuse to consent to the release of confidential information.

Statutory Authority G.S. 143B-147; 150B-1(d); 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14Q .0102; .0201 - .0202; .0305; 14R .0101; .0103 - .0107; .0201 and .0302.

The proposed effective date of this action is August 28, 1991.

The public hearing will be conducted at 10:00 a.m. on May 15, 1991 at the Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604-1159, Public Hearing Room - Ground Floor.

Comment Procedures: Any interested person may present his comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-4774 by May 14, 1991. 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.

SUBCHAPTER 14Q - GENERAL RIGHTS

SECTION .0100 - GENERAL POLICIES AND PROCEDURES

.0102 SUSPENSION AND EXPULSION POLICY

(a) Clients shall be free from threat or fear of unwarranted suspension or expulsion from services.

(b) The governing body shall develop and implement policies assuring due process fair procedures for suspending or expelling clients from services. Policies shall address the criteria to be

used for any suspension, expulsion or other discharge not mutually agreed upon and establish documentation requirements which shall include:

- (1) the specific time and conditions for resuming services following a suspension;
- (2) designation of ~~an~~ any alternative service determined to meet the client's needs; the facility shall exert its best effort to identify an alternative service; and
- (3) discharge plan.

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

SECTION .0200 - INFORMING CLIENTS AND STAFF OF RIGHTS

.0201 INFORMING CLIENTS OF RIGHTS AND RESTRICTIONS

(a) A written summary of client rights as specified in G.S. 122C, Article 3 shall be made available to all clients and legally responsible persons.

(b) Policies specified in Rule .0101(b) of this Subchapter shall assure that all clients and legally responsible persons are informed:

- (1) of the client's rights; ~~potential restrictions or use of interventions;~~
- (2) of potential restrictions or use of planned interventions by the facilities defined in 10 NCAC 14Q .0101(b);
- (3) ~~(2)~~ that the legally responsible person of a minor or incompetent adult client may request notification after any occurrence of the use of an intervention procedure as specified in Subchapter 14R, Section .0100 of these Rules;
- (4) ~~(3)~~ that the competent adult client may designate an individual to receive notification, in accordance with G.S. 122C-53(a), after any occurrence of the use of an intervention procedure as specified in Subchapter 14R, Section .0100 of these Rules;
- (5) ~~(4)~~ of notification provisions regarding emergency and intervention procedures, as delineated in Subchapter 14R, Section .0100 of these Rules; and
- (6) ~~(5)~~ of notification provisions regarding the restriction of client rights as specified in G.S. 122C-62(e).

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

.0202 INFORMING CLIENTS OF FACILITY POLICIES

(a) Each client shall be informed of facility policies concerning client rights at the time of admission or entry into the service, or as soon as feasible, but no longer than 72 hours thereafter. Documentation in the client record shall

reflect that the client or legally responsible person has been informed of facility policies.

(b) Procedures shall be implemented to assure that each client and legally responsible person shall be informed of the following:

- (1) the procedure for obtaining a copy of the client's treatment or program plan and discharge plan;
- (2) any rules that the client is expected to follow and possible penalties for violations;
- (3) the governing body grievance procedures including the individual to contact and procedures for assisting clients as needed;
- (4) the governing body policy regarding suspension and expulsion;
- (5) the governing body policy regarding fee assessment and collection practices for treatment or habilitation services;
- (6) the client's protections regarding disclosure of confidential information, as delineated in G.S. 122C-52 through G.S. 122C-56; and
- (7) the policy on search and seizure.

Statutory Authority G.S. 122C-51 through 122C-56; 122C-62; 143B-147.

SECTION .0300 - GENERAL CIVIL, LEGAL AND HUMAN RIGHTS

.0305 PROTECTION FROM HARM, ABUSE, NEGLECT OR EXPLOITATION

(a) Each governing body shall develop policies in accordance with G.S. 122C-59, G.S. 122C-65, and G.S. 122C-66.

(b) Employees shall protect clients from harm, abuse, neglect and exploitation in accordance with G.S. 122C-66.

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

(d) Employees shall not sell or buy goods or services to or from a client except in professional services delivered by the client, in public retail or through established governing body policy.

(e) Employees shall use only that degree of force necessary to repel or secure a violent and aggressive client and which is permitted by governing body policy. 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. Use of

intervention techniques shall be in compliance with Subchapter 14R of this Chapter.

(f) Each governing body must develop monitoring procedures to assure compliance with G.S. 122C-59, G.S. 122C-65, and G.S. 122C-66.

Statutory Authority G.S. 122C-59; 122C-65; 122C-66; 143B-147.

SUBCHAPTER 14R - TREATMENT OR HABILITATION RIGHTS

SECTION .0100 - PROTECTIONS REGARDING INTERVENTION PROCEDURES

.0101 LEAST RESTRICTIVE ALTERNATIVE

(a) ~~The goal of all treatment and habilitation shall be~~ Facilities shall strive to provide services in the least restrictive, most appropriate and effective positive treatment modalities.

(b) Any intervention procedure designed to reduce a behavior shall always be accompanied by positive treatment or habilitation methods.

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

.0103 GENERAL POLICIES REGARDING INTERVENTION PROCEDURES

(a) This Rule applies only to ~~services~~ facilities utilizing the following interventions:

- (1) exclusionary time-out for more than 15 minutes;
- (2) time-out for more than one hour;
- (3) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;
- (4) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities);
- (5) overcorrection to which the client resists; and
- (6) other interventions specified in Rule .0104 and Rule .0106 of this Section.

(b) The governing body shall develop policies and procedures for the use of interventions specified in Paragraph (a) of this Rule, determined to be acceptable for use in the facility. ~~Such policies shall include:~~ These policies and procedures shall be in accordance with the provisions of Subparagraph (1) or (2) of this Paragraph.

(1) Such policies and procedures, approved by the Commission, shall ensure:

(A) timely notice and explanations to the client, legally responsible persons and, if requested, by the clients or others;

(B) valid opportunities to consent to or refuse planned interventions;

- (C) the intervention is justified, properly time-limited, not applied too frequently, and that appropriate positive and less intrusive alternatives are thoroughly, systematically and continuously considered and used;
- (D) as soon as the intervention is used on a recurring or planned basis, the intervention will be incorporated into a treatment or habilitation plan which contains sufficient specifics to ensure adequate follow-through and accountability;
- (E) implementation by trained staff, closely supervised by credentialed professional;
- (F) manner, conditions and location of the intervention are safe and humane;
- (G) implementation is adequately monitored and the monitoring results are properly disseminated to assure adequate follow-through, continuing justification and timely adjustment to meet changing circumstances; and
- (H) that the safeguards in this Rule are adequately documented.
- (2) Such policies and procedures shall include:
- (A) ~~(1)~~ procedures for ensuring that the competent adult client or legally responsible person of a minor client or incompetent adult client is informed:
- (i) ~~(A)~~ of the general types of interventions that are authorized for use by the facility; and
 - (ii) ~~(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. When multiple interventions are required during a 24-hour period, such notification may be summarized to the legally responsible person one time during each 24-hour period;
 - (iii) ~~(C)~~ that the competent adult client may designate an individual to receive notification, in accordance with G.S. 122C-53(a), after any occurrence of the use of an intervention procedure as specified in Subchapter 14R, Section .0100 of this Chapter.
- (B) ~~(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 facility;
- (C) ~~(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
- (D) ~~(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:
- (i) ~~(A)~~ A treatment or program plan developed within ten working days of the third intervention. The treatment or program plan shall include, but not be limited to:
 - (I) ~~(1)~~ indication of need;
 - (II) ~~(2)~~ specific description of problem behavior;
 - (III) ~~(3)~~ specific goal to be achieved and estimated duration of procedure;
 - (IV) ~~(4)~~ specific early intervention when precursor behaviors are exhibited;
 - (V) ~~(5)~~ specific procedure to be employed;
 - (VI) ~~(6)~~ specific methodology of the intervention;
 - (VII) ~~(7)~~ methods for measuring treatment efficacy;
 - (VIII) ~~(8)~~ guidelines for discontinuation of the procedure;
 - (IX) ~~(9)~~ the accompanying positive treatment or habilitation methods which are intended to be as strong as the negative aspects of the plan; and
 - (X) ~~(10)~~ the specific limitations on approved uses of the intervention per episode and per day and requirements for on-site assessments by the responsible professional.
 - (ii) ~~(B)~~ In emergency situations, a qualified professional may continue to use the intervention until the planned intervention is addressed in the treatment or program plan.
 - (iii) ~~(C)~~ The qualified professional 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.
 - (iv) ~~(D)~~ Before implementation of the planned intervention, the treatment or habilitation team, if there is one, shall approve the treatment or program plan.
 - (v) ~~(E)~~ The use of the intervention shall be reviewed at least monthly by the treatment or habilitation team.
 - (vi) ~~(F)~~ If a client or legally responsible person refuses the use of such procedures, the right to refuse treatment

procedures as required in Rule .0302 of this Subchapter shall be followed.

- (vii) ~~(G)~~ The interventions specified in this Rule shall never be the sole treatment modality designed to eliminate the target behavior. Interventions are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.

(c) If the governing body chooses to comply with Subparagraph (b)(2) of this Rule, the following provisions shall also be applicable:

- (1) ~~(e)~~ Whenever the interventions as specified in this Subchapter result in the restriction of a right in a 24-hour facility as specified in G.S. 122C-62(b) and (d), procedures specified in G.S. 122C-62(e) shall be followed. Exceptions to this Rule include the use of seclusion, restraint and isolation time-out, which are regulated in Rule .0104 of this Section.
- (2) ~~(d)~~ Facility employees who authorize and implement interventions shall be privileged to do so, as well as to utilize alternative approaches. Such assurances shall be documented and maintained in the personnel records of facility employees.
- (3) ~~(e)~~ Statistical records that reflect the frequency and duration of the individual uses of interventions specified in this Rule shall be maintained. This statistical record shall be made available to the Human Rights Committee, if there is one, and the governing body at least quarterly.

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

.0104 SECLUSION, RESTRAINT AND ISOLATION TIME OUT

(a) This Rule delineates the procedures to be followed for seclusion, restraint and isolation time-out in addition to the procedures specified in Rule .0103(b) through ~~(e)~~ (c) of this Section.

(b) Those facilities which intend to employ the use of mechanical restraint or seclusion of a client shall be designated as a restrictive facility by the Division of Facility Services.

(c) This Rule governs the use of specific 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 is used as a measure of therapeutic treatment. Such interventions include:

- (1) seclusion;
- (2) restraint; and

(3) isolation time-out.

(d) 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 .0106 of this Section.

~~(e) If determined to be acceptable for use within the facility, the~~ The governing body shall ~~establish~~ develop written policies and procedures that govern the use of seclusion, restraint and isolation time-out, ~~which shall include the following: if determined to be acceptable for use within the facility. These policies and procedures shall be in accordance with the provisions of Subparagraph (1) or (2) of this Paragraph.~~

(1) Such policies and procedures, approved by the Commission, shall ensure:

(A) timely notice and explanations to the client, legally responsible persons and if requested by the clients or others;

(B) valid opportunities to consent to or refuse planned interventions;

(C) the intervention is justified, properly time-limited, not applied too frequently, and that appropriate positive and less intrusive alternatives are thoroughly, systematically and continuously considered and used;

(D) as soon as the intervention is used on a recurring or planned basis, the intervention will be incorporated into a treatment or habilitation plan which contains sufficient specifics to ensure adequate follow-through and accountability;

(E) implementation by trained staff, closely supervised by credentialed professional;

(F) manner, conditions and location of the intervention are safe and humane;

(G) implementation is adequately monitored and the monitoring results are properly disseminated to assure adequate follow-through, continuing justification and timely adjustment to meet changing circumstances; and

(H) that the safeguards in this Rule are adequately documented.

(2) Such policies shall include:

(A) ~~(1)~~ process for identifying and privileging facility employees who may authorize and implement such interventions;

(B) ~~(2)~~ provisions that a qualified or responsible professional shall:

- (i) ~~(A)~~ review the use of the intervention as soon as possible but at least within one hour of the initiation of its use;

- (ii) ~~(B)~~ verify the inadequacy of less restrictive intervention techniques; and
- (iii) ~~(C)~~ document in the client record evidence of approval or disapproval of continued use.
- (C) ~~(3)~~ procedures for documenting in the client record the intervention which occurred, to include, but not be limited to:
 - (i) ~~(A)~~ the rationale for the use of the intervention which also addresses the inadequacy of less restrictive intervention techniques;
 - (ii) ~~(B)~~ notation of the frequency, intensity and duration of the behavior and any precipitating circumstance contributing to the onset of the behavior;
 - (iii) ~~(C)~~ description of the intervention and the date, time and duration of its use; and
 - (iv) ~~(D)~~ signature and title of the facility employee responsible for the use of the intervention.
- (D) ~~(4)~~ procedures for the notification of others to include:
 - (i) ~~(A)~~ those to be notified as soon as possible but no more than 72 hours after the behavior has been controlled to include:
 - (I) ~~(i)~~ the treatment or habilitation team, or its designee, after each use of the intervention; and
 - (II) ~~(ii)~~ a designee of the governing body.
 - (ii) ~~(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) ~~(5)~~ procedures to identify clients with reasonably foreseeable physical consequences to the use of restraint, shall include, but not be limited to:
 - (i) ~~(A)~~ documentation of clients with physical disability or past surgical procedures that would make affected nerves and bones sensitive to injury; and
 - (ii) ~~(B)~~ the identification and documentation of alternative emergency procedures if needed.
- (f) If the governing body does not choose to comply with Subparagraph (e)(2) of this Rule, the following provisions shall be applicable:
 - (1) ~~(4)~~ Any room used for seclusion or isolation time-out shall meet the following criteria:
 - (A) ~~(4)~~ The room shall be designed and constructed to ensure the health, safety and well-being of the client.
 - (B) ~~(2)~~ The floor space shall not be less than 50 square feet, with a ceiling height of not less than eight feet.
 - (C) ~~(3)~~ Floor and wall coverings, as well as any contents of the room, shall have a one-hour fire rating and shall not produce toxic fumes if burned.
 - (D) ~~(4)~~ The walls shall be kept completely free of objects.
 - (E) ~~(5)~~ A lighting fixture, equipped with a minimum of a 75 watt bulb, shall be mounted in the ceiling and be screened to prevent tampering by the client.
 - (F) ~~(6)~~ One door of the room shall be equipped with a window mounted in a manner which allows inspection of the entire room. Glass in any windows shall be impact resistant and shatterproof.
 - (G) ~~(7)~~ The room temperature and ventilation shall be comparable and compatible with the rest of the facility.
 - (H) ~~(8)~~ In a room where the door is not under direct observation by staff and if a staff person is not assigned to continuously observe the area during the duration of the confinement, the lock on the room shall be interlocked with the fire alarm system so that the door automatically unlocks when the fire alarm is activated.
 - (2) ~~(5)~~ Seclusion, restraint and isolation time-out shall not be employed as retaliation 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.
 - (3) ~~(4)~~ Whenever seclusion, restraint or isolation time-out is used on an emergency basis prior to inclusion in the treatment or program plan, the following procedures shall be followed:
 - (A) ~~(4)~~ A facility employee privileged to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.
 - (B) ~~(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 facility employee, concurs that the intervention is justified for longer than 15 minutes, continuation

of the intervention may be verbally authorized 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 or program plan shall be consulted.

- (C) ~~(3)~~ Use of isolation time-out shall not exceed one hour in Intermediate Care Facilities for the Mentally Retarded (ICF/MR).
- (D) ~~(4)~~ The continued use of seclusion or restraint for over one hour shall only be authorized by the responsible professional. 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 seclusion or restraint is justified for longer than one hour, continuation of the intervention may be verbally authorized until an on-site assessment of the client can be made. The responsible professional shall meet with and conduct an assessment of the client and write such authorization within 12 hours from the time of initial employment of the intervention.
- (4) ~~(1)~~ 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(b) and (d), are restricted. The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for restriction of rights in G.S. 122C-62(b) and (d). Rights specified in G.S. 122C-62(a) and (b) shall be exercised at reasonable intervals.
- (5) ~~(1)~~ Whenever seclusion, restraint, or isolation time-out is used more than three times in 30 consecutive days, the procedure shall be addressed as a planned intervention in the treatment or program plan.
- (6) ~~(1)~~ In addition to the requirements in this Rule, additional safeguards as specified in Rule .0106 of this Section shall be initiated under the following conditions:
 - (A) ~~(1)~~ whenever a client exceeds spending 40 hours, or more than one episode of 24 or more continuous hours in emergency seclusion, restraint or isolation time-out during 30 consecutive days; or
 - (B) ~~(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.

- (7) ~~(4)~~ The written approval of the designee of the governing body shall be required when seclusion, restraint or isolation time-out is utilized for longer than 24 continuous hours.
- (8) ~~(1)~~ Standing orders or PRN orders shall not be used to authorize the use of seclusion, restraint or isolation time-out.
- (9) ~~(1)~~ The client shall be removed from seclusion, restraint or isolation time-out as soon as therapeutically appropriate but in no case shall the client remain in seclusion, restraint or isolation time-out longer than 30 minutes after gaining behavioral control. If the client is unable to gain self-control within the time frame specified in the authorization, a new authorization must be obtained.
- (10) ~~(1)~~ While the client is in seclusion, restraint or isolation time-out, the following precautions shall be followed:
 - (A) ~~(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.
 - (B) ~~(2)~~ Whenever a client is in isolation time-out, there shall be a 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. Such observation shall be documented in the client record.
 - (C) ~~(3)~~ When restraint is used in the absence of seclusion and the client may be subject to injury, a facility employee shall remain present with the client continuously.
- (11) ~~(1)~~ Reviews and reports on the use of seclusion, restraint and isolation time-out shall be conducted as follows:
 - (A) ~~(1)~~ all uses of seclusion, restraint and isolation time-out shall be reviewed in a timely fashion by a designee of the governing body and unusual or possibly unwarranted patterns of utilization shall be investigated;

(B) ~~(2)~~ a log which includes the following information on each use of restraint, seclusion and isolation time-out shall be maintained:

- (i) ~~(A)~~ name of the client;
- (ii) ~~(B)~~ name of the responsible professional;
- (iii) ~~(C)~~ date of each intervention;
- (iv) ~~(D)~~ time of each intervention;
- (v) ~~(E)~~ type of intervention;
- (vi) ~~(F)~~ duration of each intervention; and
- (vii) ~~(G)~~ reason for use of the intervention.

(12) ~~(4)~~ 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 this Rule shall apply with the exception of Subparagraphs ~~(e)(3)(A)~~ ~~(e)(2)(B)(i)~~ and ~~(B)~~ ~~(ii)~~, and Paragraph ~~(h)~~ Subparagraph ~~(f)(3)~~ of this Rule.

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

.0105 PROTECTIVE DEVICES

(a) Whenever protective devices are utilized for clients, the governing body shall develop policies to ensure that:

- (1) the necessity for the protective device has been assessed and the device applied by a professional person who has been trained and privileged in the utilization of protective devices;
- (2) the protective device is the least restrictive appropriate measure;
- (3) the client is frequently observed and provided opportunities for toileting, exercise, etc. as needed. Protective devices which limit the client's freedom of movement shall be observed at least every hour. Whenever the client is restrained and subject to injury by another client, a facility employee shall remain present with the client continuously. Observations and interventions shall be documented in the client record;
- (4) protective devices are cleaned at regular intervals; and
- (5) the utilization of protective devices in the treatment or program plan shall be subject to review by the Human Rights Committee, if there is one.

(b) In addition to the requirements specified in Paragraph (a) of this Rule, protective devices used for behavioral control which have the effect of significantly restraining the client's freedom of movement shall comply with the requirements

specified in Rule .0103 and Rule .0104 of this Section.

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

.0106 INTERVENTIONS REQUIRING ADDITIONAL SAFEGUARDS

(a) This Rule applies only to services utilizing interventions specified in Paragraph (b) of this Rule which 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 .0103 and Rule .0104 of this Section if seclusion, restraint or isolation time-out is utilized.

(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 or habilitation procedures. Such interventions include the use of:

- (1) seclusion, restraint or isolation time-out employed as a measure of therapeutic treatment; and
- (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.

(c) The governing body shall develop policies and procedures regarding additional safeguards if seclusion, restraint or isolation time-out are determined to be acceptable for use in the facility. These policies and procedures shall be in accordance with the provisions of Subparagraph (1) or (2) of this Paragraph:

- (1) such policies and procedures, which shall be approved by the Commission, shall ensure:
 - (A) timely notice and explanations to the client, legally responsible persons and if requested by the clients or others;
 - (B) valid opportunities to consent to or refuse planned interventions;
 - (C) the intervention is justified, properly time-limited, not applied too frequently, and that appropriate positive and less intrusive alternatives are thoroughly, systematically and continuously considered and used;
 - (D) as soon as the intervention is used on a recurring or planned basis, the intervention will be incorporated into a treatment or habilitation plan which contains sufficient specifics to ensure adequate follow-through and accountability;
 - (E) implementation by trained staff, closely supervised by credentialed professional;

- (F) manner, conditions and location of the intervention are safe and humane;
- (G) implementation is adequately monitored and the monitoring results are properly disseminated to assure adequate follow-through, continuing justification and timely adjustment to meet changing circumstances; and
- (H) that the safeguards in this Rule are adequately documented.
- (2) If the governing body chooses not to develop policies and procedures as stated in Subparagraph (c)(1) the following provisions shall apply:
 - (A) ~~(e)~~ 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.
 - (B) ~~(d)~~ Prior to the implementation of any planned use of the interventions specified in Paragraph (b) of this Rule, the following written approvals and notifications shall be obtained and documented in the client record:
 - (i) ~~(4)~~ The responsible professional and the treatment or habilitation team if there is one shall approve the plan.
 - (ii) ~~(2)~~ Each client whose treatment or program plan includes interventions with reasonably foreseeable physical consequences shall receive an initial medical examination and periodic planned monitoring by a physician.
 - (iii) ~~(2)~~ The governing body shall assure that a client advocate has been identified and informed that the intervention has been planned for the client and the rationale for utilization of the intervention.
 - (iv) ~~(4)~~ The governing body shall assure that an Intervention Advisory Committee as defined in Rule .0107 of this Section has been organized and informed regarding the intervention being planned for the client. Confidential information provided to the advisory committee shall be within the constraints of G.S. 122C-53(a).
 - (v) ~~(5)~~ A designee of the treatment or 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 legally responsible person shall be obtained except for those situations specified in Rule .0104 ~~(4)(1)~~ ~~(f)(6)(A)~~ of this Section. If the client or legally responsible person, if applicable, refuses the intervention, the governing body's procedures regarding the right to refuse treatment procedures shall be followed.
 - (C) ~~(e)~~ If any of the persons or committees specified in Subparagraphs ~~(d)(1), (2), (4), or (5)~~ ~~(c)(2)(B)(i), (ii), (iii), (iv) or (v)~~ of this Rule do not approve the continued use of a planned intervention, the planned intervention shall be terminated. The governing body shall establish an appeal mechanism for the resolution of any disagreement over the use of the intervention.
 - (D) ~~(4)~~ Neither the consents nor the approvals specified in Paragraph ~~(d)~~ Subparagraph (c)(2)(B) of this Rule shall be considered valid for more than six months. The responsible professional and the treatment or habilitation team, if there is one, 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. The decision to continue the intervention shall be based on clear and recent behavioral evidence that the intervention is having a positive impact and continues to be needed.
 - (E) ~~(g)~~ The plan shall be reviewed at the next meeting of the Intervention Advisory Committee within the constraints of 10 NCAC 18D .0215, division publication APSM 45-1, 1/10/86, (CONFIDENTIALITY RULES), adopted pursuant to G.S. 150B-14(c). The Committee, by majority vote, may recommend approval or disapproval of the plan or may abstain from making a recommendation. Implementation of the intervention shall be reviewed by the Committee within 30 days of the initiation of the plan.
 - (F) ~~(4)~~ The intervention shall be used only when the responsible professional and the treatment or habilitation team, if there is one, has determined and documented in the client record the following:

- (i) ~~(1)~~ that the client is engaging in behaviors that are dangerous, aggressive and likely to result in injury to self or others;
 - (ii) ~~(2)~~ that other methods of treatment or habilitation employing less intrusive interventions are not appropriate or effective, with the reasons supporting this determination;
 - (iii) ~~(3)~~ the frequency, intensity and duration of the target behavior, and the behavior's probable antecedents and consequences; and
 - (iv) ~~(4)~~ that in the case of aversive interventions, a systematic study on alternatives to such interventions has been conducted and other non-aversive techniques have been tried and did not work.
- (G) ~~(4)~~ Accurate and up-to-date written records shall be maintained on the application of the intervention and accompanying positive procedures. These records shall include at a minimum the following:
- (i) ~~(1)~~ data which reflect the frequency, intensity and duration with which the targeted behavior occurs (scientific sampling procedures are acceptable);
 - (ii) ~~(2)~~ data which reflect the frequency, intensity and duration of the intervention and any accompanying positive procedures; and
 - (iii) ~~(3)~~ data which reflect the facility employees who administered the interventions.
- (H) ~~(5)~~ The governing body shall assure that the interventions are evaluated at least weekly and are documented in the client record. A qualified professional shall be involved in this evaluation at least every other week.
- (I) ~~(6)~~ During the use of the intervention, the intervention advisory committee shall be given the opportunity to review the treatment or program plan within the constraints of 10 NCAC 18D .0215 division publication APSM 45-1, 1/10/86, (CONFIDENTIALITY RULES) adopted pursuant to G.S. 150B-14(c).

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

.0107 INTERVENTION ADVISORY COMMITTEES

(a) Intervention advisory committees shall be established to provide an additional safeguard in

those facilities that utilize intrusive treatment or habilitation interventions specified in Rule 14R .0106. For facilities operated by or under contract with an area program, the Intervention Advisory Committee shall be appointed by the Client Rights Committee. For facilities operated by or under contract with an area program the Intervention Advisory Committee shall be the Client Rights Committee or a subcommittee of it, which may include other members.

(b) The Committee shall ~~be composed of include at least three to five~~ concerned citizens who are not employees of, or members of, the governing body. One of the individuals shall be The Intervention Advisory Committee shall have a member or a regular independent consultant who is a professional with training and expertise in the use of the type of interventions being utilized, who is not involved in the treatment or habilitation of the client. The Committee shall also include at least one person who is or has been a consumer or who is a close relative of a consumer.

(c) Each committee shall have policies governing its operation.

(d) The governing body shall assure that the committee is supplied with appropriate statutes and rules governing client rights and related issues and literature about the proposed interventions and their alternatives. The governing body shall also assure that each member of the Committee has received specific training and orientation as to the charge of the Committee.

(e) The Committee shall maintain minutes of each meeting. Care shall be taken that the minutes do not violate the provisions of G.S. 122C-52.

(f) Each committee shall make an annual written report to the governing body on the activities of the Committee.

(g) Committee members shall have access to client records on a need to know basis only upon the written informed consent of the client or his legally responsible person as specified in G.S. 122C-53(a). This access shall be given only when necessary for committee members to perform their duties.

(h) Committee members shall treat the client record as confidential information in accordance with G.S. 122C-52 through G.S. 122C-56.

(i) Each committee shall have a caseload of not more than 30 clients whose intrusive interventions are being reviewed.

~~(j) A Human Rights Committee serving this function shall comply with this Rule.~~

Statutory Authority G.S. 122C-51 through 122C-56; 143B-147.

PROPOSED RULES

SECTION .0200 - PROTECTIONS REGARDING MEDICATIONS

.0201 SAFEGUARDS REGARDING MEDICATIONS

(a) The facility shall follow the Rules in 10 NCAC 14K .0349 through .0355, G.S. 122C-57, and G.S. 90, Articles 1, 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 14K .0333, ~~and .0334,~~ and G.S. 122C-57(f) and applicable federal law.

(c) The governing body of a medical service which utilizes neuroleptic medications shall establish the following policies and procedures relative to utilization of such medications and safeguards for prevention of tardive dyskinesia in accordance with sound medical practice:

- (1) ~~methods for~~ minimizing the risk of tardive dyskinesia by prescribing neuroleptic medication judiciously and in the lowest possible therapeutic dosages.
- (2) training aimed at education of facility staff regarding indications for using neuroleptic medication, expected therapeutic effects of neuroleptic medication and common side effects including indications of tardive dyskinesia; and
- (3) ~~procedures for~~ monitoring clients on neuroleptic medications for signs of tardive dyskinesia including the following:
 - (A) designation of a standardized procedure or rating system;
 - (B) frequency of client examinations;
 - (C) training and privileging of examiners in the selected methodology; and
 - (D) documentation in the client record.

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

SECTION .0300 - RIGHT TO REFUSE TREATMENT

.0302 INTRUSIVE INTERVENTIONS

(a) Interventions as specified in Rules .0103 through .0106 of this Subchapter shall not be administered to a voluntary client in a non-emergency situation if the client or legally responsible person refuses the interventions except for those situations specified in Rule 14R .0104 ~~(k)(1).~~ (f)(6)(A).

(b) The governing body shall develop and implement policies assuring due process procedures for involuntary clients who refuse the use of intrusive interventions.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Director, Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 18A .0124 - .0128, .0130, .0132 - .0133, .0135; and repeal rules cited as 10 NCAC 18A .0129, .0131, .0134.

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 9:00 a.m. on May 17, 1991 at the Albemarle Building, 325 N. Salisbury Street, Room 864, Raleigh, NC 27603.

Comment Procedures: Any interested person may present his comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 North Salisbury Street, Raleigh, NC 27603, (919) 733-4774 by May 16, 1991. Written comments must be sent to the above address and must state the rule(s) to which the comments are address. Fiscal information on these rules is also available from the same address.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18A - MONITORING PROCEDURES

SECTION .0100 - REVIEW PROCESS FOR AREA PROGRAMS AND THEIR CONTRACT AGENCIES

.0124 SCOPE

Rules ~~.0123~~ .0125 through .0136 in this Section apply to all area programs and their contract agencies.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0125 DEFINITIONS

As used in this Section, the following terms have the meanings specified:

- (1) ~~"APSM 40.1" means the Division publication entitled "Review Process for Area Programs and Their Contract Agencies" as~~

effective September 1, 1986. The manual may be reviewed at area program offices, regional offices, or the Publications Office of the Division. Copies may be obtained from the Publications Office of the Division at a charge which covers printing and postage. "Area program" means the legally constituted agency providing mental health, developmental disabilities, and substance abuse services, either directly or under contract, for a designated catchment area.

- (2) "Biennial Review" means a self-survey by an area program and all of its area-operated and contract components which occurs at least every two years in accordance with the rules in this Section and instructions outlined in APSM 40-1 to determine continued compliance with applicable rules of the Commission and the Secretary. "Certification" means the designation given a service by the Division to indicate:

- (a) compliance with all applicable statutes and rules of the Commission and the Secretary; or
- (b) evidence that action is being taken to correct all out-of-compliance findings.

- (3) "Certification" means the designation given a component by the Division to indicate the status of compliance with rules of the Commission and the Secretary. Certification shall include one of the following:

- (a) "Temporary Certification" means the status given when a component is temporarily authorized to receive state and federal funds until an on-site certification review of new or currently uncertified components can be conducted to determine compliance status.
- (b) "Provisional Certification" means the status given when a component is unable to comply with one or more applicable rules and the non-compliance does not present an immediate threat to health, welfare or safety of the individuals served.
- (c) "Full Certification" means the status given when a component fully complies with all applicable rules.

"Commission" has the same meaning as specified in G.S. 122C-C.

- (4) "Component" means a service developed to meet a particular need which is provided either through operation by the area program or through its contract with a public or private agency. For the purpose of certification and decertification, area program management services are considered to be a component, and each component stands as a separate entity. "Decertification" means the

loss of certification status for a service when the Division determines that an area program or its contract agency fails to meet applicable statutes or rules within designated time frames or when non-compliance presents an immediate threat to health, welfare or safety of the individuals served. Decertification may result in the delay, reduction or denial of state and federal funds. Under the provisions of Pioneer and the State Medicaid Plan, payments will not be made for services which are decertified.

- (5) "Decertification" means the loss of certification status following a review process in which it is determined that the component is not licensed in accordance with North Carolina statutes or certified in accordance with the rules in this Section and APSM 40-1. Decertification may result in the delay, reduction or denial of state and federal funds, revocation of license, or loss of Medicaid provider status. "Division" has the same meaning as specified in G.S. 122-C.

- (6) "Inventory of Services" means a composite list of services provided by an area program of area-operated and contract components as maintained by the Client Information Systems Branch of the Division. The inventory includes, but is not limited to, name, address, type of service, disability and age group served, and contract or area-operated status. "Provider" means the person or agency responsible for the provision of a service.

- (7) "On-site Certification Review" means a review process through which compliance with applicable rules in an area-operated component is evaluated at the specific site by the regional office staff, in a contract component, by the area program staff. "Service" means the care, treatment, rehabilitation or habilitation which is provided by an area program. For the purpose of this document, the term "service" may refer to one or more sites where the service is provided or to a System of Services as approved by the Commission.

- (8) "Program Review Branch" means the branch of the Quality Assurance Section of the Division which is responsible for developing the process and coordinating the review of mental health, mental retardation and substance abuse services provided by area programs and their contract agencies.

- (9) "Review Process" means a process to monitor components for compliance with the required quality assurance activities as well as other applicable rules of the Com-

mission and the Secretary in accordance with G.S. 122C-191(d) and the rules of this Section.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0126 GENERAL PROVISIONS

(a) All area-operated and ~~contract components, including all physical locations, contracted services~~ of an area program shall be reviewed for compliance with the applicable rules of the Commission and the Secretary. The review shall be conducted in accordance with the rules in this Section. Following full certification, each ~~component service~~ shall continue to be reviewed, at a minimum, once during every ~~biennial triennial~~ review cycle.

(b) Each ~~component service~~ shall ~~have either temporary, provisional, or full certification be certified~~ in order to receive state and federal funds.

(c) A facility subject to licensure shall not serve clients until properly licensed in accordance with applicable statutes and rules.

(d) The rules used in any review for certification shall be the applicable rules as codified in 10 NCAC 181 through 18Q and other applicable rules of the Commission and the Secretary.

(1) A rule shall be judged as "met" when:

(A) the rule was clearly met; or

(B) the rule was not completely met, but the correction of the out-of-compliance issue can be easily and quickly accomplished and there is evidence of efforts to do so.

Otherwise, a rule shall be judged "not met."

(2) A rule may be judged "not applicable" only when it allows options of non-applicability or waiver as otherwise provided by law.

(e) On-site review and the written certification report for an area-operated ~~component service~~ are the responsibility of the ~~regional director with participation by the Raleigh office as needed.~~ Division. On-site review and the written certification report for a ~~contract component contracted service~~ are the responsibility of the area director with participation by the ~~regional office~~ Division as needed. Written certification reports shall be in the format specified in Division Publication APSM 40-1 "Review Process for Area Programs and Their Contract Agencies". These referenced rules have been adopted in accordance with G.S. 150B-14(e).

(f) Reviews conducted for the purpose of continuing certification shall be accomplished

through a ~~biennial self-triennial~~ survey as described in Rule .0130 of this Section.

(g) The ~~regional director and division director~~ Division shall be responsible for approval and issuance of certification for area-operated ~~components services~~.

(h) The area director and ~~regional director the~~ Division shall be responsible for approval and issuance of certification for ~~contract components contracted services~~.

(i) The ~~regional director~~ Division shall notify the area director in writing when an area-operated ~~component's service's~~ certification is denied or changed or when the ~~component service~~ is decertified. The written notification shall give the reasons for such action and the right to appeal the decision according to Rule .0135 of this Section. The area director shall provide the same notification to the ~~contract contracted~~ provider or agency director when such action involves a contract ~~component service~~.

(j) In addition to the review procedures prescribed in this Section, other reviews may be conducted as follows:

(1) The Division director may, at any time, authorize an on-site review of any ~~component service~~.

(2) Any area-operated or ~~contract component contracted service~~ may, at any time, with the approval of the area director, request an on-site review from its ~~respective regional office the~~ Division for the purpose of consultation and technical assistance. Such reviews shall not, however, exempt the ~~component from~~ However, the Division's responsibility in recognizing compliance with all other rules of this Section remains.

(3) An area director may request approval of a System of Services, in the format approved by the Commission, for supervised independent living, alternative residence and companion sitter.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0127 CERTIFICATION

(a) The area program shall submit an application for ~~temporary certification for each new or uncertified component or in situations requiring an on-site review a service~~, as specified in this Rule .0134 of this Section on the Division's "Application for Temporary Certification" form, which may be obtained from the regional office.

(b) The area program shall submit the application to the ~~regional office~~ Division for all new ~~components services~~ at least 30 days prior to: the

receipt of any divisional funds, including start-up funds.

- (1) provision of service to a client in an uncertified service;
- (2) change in provider for an existing service;
or
- (3) change of location if requested by the regional director.

(c) An approved "Application for Temporary Certification" serves as the notice of temporary certification. Temporary Certification shall be granted upon a determination by the Division that sufficient data has been provided by the applicant and there is reasonable assumption that the applicant will be able to fully perform all obligations pursuant to the temporary certification.

(d) A temporary certification shall not exceed six months.

(e) (d) If the component service appeals the denial of temporary certification, funds shall not be available to the component service unless it agrees to meet the Division requirements pending the outcome of the appeal.

(e) Certification shall not begin prior to the date of application for certification.

(f) Prior to expiration of temporary certification, an on-site certification review shall be conducted, following which provisional certification in accordance with Rule .0128 of this Section or full certification in accordance with Rule .0129 of this Section may be granted or the component may be decertified in accordance with Rule .0132 of this Section. An on-site review of a service which has been initially approved shall be completed within six months of the date of application.

(g) A component shall not receive two consecutive temporary certifications. During the six months following application, the appropriate staff shall provide consultation and technical assistance to the service provider in order to familiarize the provider with applicable statutes and rules.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0128 OUT-OF-COMPLIANCE FINDING

(a) Provisional certification shall be granted at any time when:

- (1) a component is found to be out-of-compliance with one or more applicable rules which do not present an immediate threat to the health, welfare or safety of the individuals served; or
- (2) a component subject to licensure is provisionally licensed.

(b) Provisional certification shall not exceed six months.

(c) During the provisional certification period, the regional director shall provide consultation and technical assistance to the area-operated components, if indicated, to correct any areas of non-compliance; the area director shall provide such consultation and technical assistance to contract components.

(d) During the provisional certification period, the area director shall submit a statement for review and approval by the regional director and division director describing the corrective action taken by a component.

(e) When all out-of-compliance or provisional licensure issues are fully resolved and documented, a full certification shall be issued.

(f) If all out-of-compliance or licensure issues are not fully resolved and documented, a notice shall be sent to the area director 30 days prior to expiration of the provisional certification that decertification procedures will be initiated by the regional office unless a request for waiver of a rule has been approved.

(g) A component shall not receive two consecutive provisional certifications.

(a) When a service is found to be out-of-compliance with one or more applicable statutes or rules which do not present an immediate threat to the health, welfare or safety of the individuals served, the area program shall show evidence that action is, or will be, taken to correct all out-of-compliance findings. This is accomplished through the development of a corrective action plan.

(b) The area director shall submit a corrective action plan within 30 days of written notification of out-of-compliance findings for review and approval by the Division. If not approved, the Division returns the plan to the area director for further resolution.

(c) When out-of-compliance findings are documented, the Division shall provide consultation and technical assistance to the area program service, if requested. The area director shall be responsible for contracted services, but may request assistance from the Division.

(d) The time allowed for the corrective action to be taken may not exceed six months unless there is good cause as determined and approved by the Division.

(e) When out-of-compliance issues are fully resolved with supporting documentation, a letter shall be sent to the area board chairperson and the area director from the Division stating that all issues are resolved.

(f) If out-of-compliance issues are not fully resolved and it is felt by the Division that there is

not evidence that acceptable action is being taken to correct the out-of-compliance findings, a letter shall be sent to the area board chairperson and area director from the Division stating that decertification procedures will be initiated.

Statutory Authority G. S. 122C-113;
122C-141(b); 122C-142(a); 122C-191(d).

.0129 FULL CERTIFICATION (REPEALED)

Statutory Authority G.S. 122C-113;
122C-141(b); 122C-142(a); 122C-191(d).

.0130 TRIENNIAL REVIEW

(a) Each area program and its area-operated and contracted components which are certified as of the effective date of the rules in this Section may continue certification by participation in a biennial self-survey as described in this Rule.

(b) The regional director shall select and notify the area programs to be reviewed each year of the two-year self-survey cycle.

(c) The area director shall appoint a self-survey coordinator who must participate in a training session on the self-survey process.

(d) By the date specified by the regional director, the area director shall:

- (1) ensure that self-survey check sheets have been completed by each component with participation of component staff;
- (2) ensure that the Inventory of Services is an accurate reflection of all services provided at the time of the self-survey;
- (3) prepare a composite report for review and approval by the regional director consisting of the following:
 - (A) a list of all components which were in full compliance;
 - (B) a list of components having unresolved non-compliance issues including the identification of rules "not met" by each individual component;
 - (C) a list of components for which decertification is in process, if any, and reason for such action; and
 - (D) a statement in the format specified in APSM 40-1 and signed by the area director and the area board chairperson reflecting that the information provided is a true and accurate report of the compliance status of the area program and its components; and
- (4) transmit the following to the regional director:
 - (A) signed composite report; and
 - (B) a copy of all completed check sheets.

(e) Appropriate certifications shall be issued based upon review and approval of the items in (d) of this Rule.

(a) Area programs shall maintain certification by participation in a triennial, on-site, certification review process as described in this Section.

(b) At least 60 days, but not more than 180 days, prior to the on-site review, the area director shall assure that:

(1) the Inventory of Services, which is provided by the Division, is an accurate reflection of its current area-operated and contracted services; and

(2) all area-operated and contracted services are reviewed and a statement of compliance or a corrective action plan is submitted to the Division.

(c) The area director shall be responsible for corrective actions which address out-of-compliance findings identified during the review as described in Rule .0128 of this Section.

Statutory Authority G.S. 122C-113;
122C-141(b); 122C-142(a); 122C-191(d).

.0131 ON-SITE VALIDATION PROCESS (REPEALED)

Statutory Authority G.S. 122C-113;
122C-141(b); 122C-142(a); 122C-191(d).

.0132 DECERTIFICATION

(a) Decertification of a component service shall be initiated:

- (1) immediately upon confirmation that a component service subject to licensure is not licensed;
- (2) immediately upon notification by the licensing agency that the license for a component service has been revoked;
- (3) immediately when there is substantiated evidence of conditions which threaten the health, safety or welfare of individuals served;
- (4) within 30 days prior to the expiration of the provisional certification if the required corrective action statement has not been submitted and implemented; upon failure to complete corrective action in accordance with the approved plan; or
- (5) upon failure to participate in the biennial self-triennial survey. or the validation process.

(b) If, after review of evidence, the Division director finds that a component service meets one or more of the conditions specified in Paragraph

(a) of this Rule and that the appropriate proce-

PROPOSED RULES

dures have been followed by the Division, Division funds may be withheld as outlined in 10 NCAC 14C .1013 until compliance is achieved as determined by the Division director.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0133 CHANGES IN STATUS

(a) A "Change In Status" form as ~~specified in Division Publication APSM 40-1 "Review Process for Area Programs and Their Contract Agencies"~~ provided by the Division shall be submitted immediately for a ~~component~~ service by the area director to the ~~regional director~~ Division when a change occurs in information in the Inventory of Services, excluding those situations requiring an ~~on-site review~~ application for certification as specified in Rule ~~.0134(a)~~ .0127(b) of this Section. These referenced rules have been adopted in accordance with G.S. 150B-14(c).

(b) ~~Upon validation of the change, the regional director shall forward the form to the Division.~~

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

.0134 SITUATIONS REQUIRING ON-SITE CERTIFICATION REVIEW (REPEALED)

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d);

.0135 APPEALS AND WAIVERS

(a) Area boards may informally appeal to the Division's actions Division director regarding certification and the withholding of Division funds. Formal appeals may be requested in accordance with ~~according to the~~ procedures specified in accounting rule 10 NCAC 14C .1013 and the rules for contested cases as codified in 10 NCAC 14B, Section .0300.

(b) Area boards may request a waiver of ~~an individual rule or~~ rules by submitting a written request to the Division director. ~~If the Commission, secretary or division director grants a waiver of a rule, If a rule has been waived by the proper authority,~~ the program shall be exempt from review of the rule. ~~for which the waiver was granted.~~

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Aging intends to adopt rules cited as 10 NCAC 22J .0101 - .0104, .0201, .0301 - .0310.

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 2:00 p.m. on May 15, 1991 at the N.C. Division of Aging, 693 Palmer Drive, Room 127, Raleigh, NC 27603.

Comment Procedures: Written comments concerning the proposed regulations must be submitted by May 15, 1991 to: Gary H. Cyrus, Division of Aging, Caller Box Number 29531, 693 Palmer Drive, Raleigh, NC 27626-0531. Oral presentations may be presented at the hearing. Any person may request information or copies of the proposed regulations by writing Mr. Gary Cyrus at the aforementioned address or by calling him at (919) 733-8399.

CHAPTER 22 - AGING

SUBCHAPTER 22J - IN-HOME AIDE SERVICES FOR OLDER ADULTS

SECTION .0100 - SCOPE OF SERVICE

.0101 SCOPE OF IN-HOME AIDE SERVICES

As used in this Subchapter, the following definition of In-Home Aide Services shall apply:

- (1) Primary Service. In-Home Aide Services are those paraprofessional services which assist the individual, his family or both with essential home management tasks, personal care tasks, or supervision, or all of the above, to enable the individual, his family, or both to remain, and function effectively, at home as long as possible.
- (2) Respite Care Component. In-Home Aide Services may be used for the purpose of providing respite for a primary caregiver. For this purpose, In-Home Aide Services may be provided to a client or patient in his own home or in the home of his primary caregiver. Respite Care may consist of any level of home management or personal care tasks.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0102 DEFINITIONS

As used in this Subchapter, the following terms shall have the meanings specified:

- (1) "Activities of Daily Living (ADL)" include eating, dressing, bathing, toileting, bowel and bladder control, transfers, ambulation and communication such as speaking, the written word, signing, gestures and communication devices.
- (2) "Available Person" is someone who lives with or near the client, who has the time and is willing to perform the needed services.
- (3) "Primary Caregiver" is the person who voluntarily provides the most care or assumes the most responsibility for another person.
- (4) "Home Management" includes tasks that range from basic housekeeping, shopping, and essential transportation to intensive work with individuals and their families on budgeting and family management.
- (5) "Instrumental Activities of Daily Living (IADL)" includes meal preparation, medication intake, cleaning, money management, phone use, laundering, reading, writing, shopping and going to necessary activities.
- (6) "Medically Stable" means physical or mental adaptation to previously recognized health problems with effective maintenance by diet, medication, or routine physical exercise, or a combination of these remedies.
- (7) "Medically Unstable" means a recent acute illness or complications of a chronic condition that are not physically or mentally controlled by diet, medication, or physical exercise, or a combination of these remedies and which require frequent monitoring and testing by skilled professionals.
- (8) "Older Adult" means 60 years of age or older.
- (9) "Own Home" means that the service recipient is living in a residence he maintains for himself or is maintained for him. "Own home" does not include any group care setting.
- (10) "Personal Care" includes tasks that range from assistance with basic personal hygiene and grooming, feeding, and ambulation to medical monitoring and other health care related tasks.
- (11) "Respite Care" is a component of In-Home Aide Services which provides needed relief to primary caregivers of persons who cannot be left alone because of mental or physical problems.
- (12) "Responsible Person" is someone who is dependable and capable of performing the needed services for the client.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0103 DESCRIPTION OF IN-HOME AIDE SERVICE LEVELS

As used in this Subchapter, the following descriptions of In-Home Aide Service levels shall apply for older adults:

- (1) Level I - Home Management. In-Home Aide Services at this level are intended to provide support to persons and their families who require assistance with basic home management tasks, such as housekeeping, cooking, shopping, and bill paying. Clients to be served include those who are self-directing, medically stable, and who have at least one instrumental activity of daily living (IADL) impairment. Personal care tasks may not be performed at this level.
- (2) Level II - Home Management and Personal Care. In-Home Aide Services at this level are intended to provide support to persons and their families who require assistance with basic activities of daily living and home management tasks. Both the home management and assistance with personal care tasks can be provided to the client when his capacities are diminishing or when the client is striving to maintain or improve his own functioning. Clients to be served include those who are medically stable and partially dependent in carrying out one or two activities of daily living (ADL) due to physical or mental impairments, or both; or who have maintenance needs or rehabilitative potential, or both. In addition to their personal care needs, clients may also require assistance with IADL activities to improve IADL functioning or to learn independent living skills; or they may have two to four IADL needs requiring additional support to maintain or achieve overall functioning.
- (3) Level III - Home Management. In-Home Aide Services at this level are intended to provide intensive education and support to persons and their families in carrying out home management tasks and improving family functioning skills. Provision of the service primarily focuses on individualized work with a client and his family in teaching and demonstrating skills and tasks and reinforcing improved client and family accomplishments. It also involves direct care and support in crisis situations. Clients to be served generally have moderate to severe limitations in cognitive or psycho-social functioning, but have potential for partial or total independence in IADL or home

management functioning, or both. Some clients may have more than four IADL impairments.

- (4) **Level III - Personal Care.** In-Home Aide Services at this level are intended to provide substantial ADL support to persons who require assistance with health or personal care tasks, or both. Provision of these tasks involves extensive "hands on" care and potential assistance with a wide range of health related conditions. Clients to be served include those who are medically stable with three or more ADL impairments resulting from a chronic condition; or who are medically stable with significant ADL impairments, but have rehabilitative potential; or who are medically unstable due to recent illness, complications of a chronic condition, or a deteriorating condition with variable ADL and IADL needs.
- (5) **Level IV - Home Management.** In-Home Aide Services at this level are intended to provide a wide range of educational and supportive services to persons and their families who are in crisis or who require long term assistance with complex home management tasks and family functioning skills. Provision of the service involves quick and creative response to individual and family crisis situations identified by the case manager; it also focuses on appropriate learning sessions with small groups of persons from different families who have similar needs. Clients to be served include those who have serious limitations in cognitive or psychosocial functioning, or both, but who have the potential for major or complete independence in IADL functioning and who have little or no ADL impairment.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0104 TARGET POPULATION

The target population consists of individuals who are unable to carry out tasks essential to the activities of daily living or the instrumental activities of daily living, or both, who have no responsible person available to perform these tasks, and who need the service in order to remain in their own homes. It also includes functionally impaired persons whose primary caregivers need relief from everyday caregiving responsibilities in order for the impaired individuals to remain at home.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

SECTION .0200 - CLIENT ELIGIBILITY

.0201 ELIGIBILITY FOR IN-HOME AIDE SERVICES

- (a) Persons eligible for services must be 60 years of age or older, live at home, and have home management or personal care needs, or both.
- (b) Persons served must be in need of the service for all of the following reasons:
- (1) the person is unable to carry out one or more tasks essential to the activities of daily living (ADL's) or instrumental activities of daily living (IADL's);
 - (2) the person needs help with these tasks in order to remain in his own home; and
 - (3) a responsible person is not available to perform these tasks or the primary caregiver needs relief.
- (c) Persons must be served in the following order of priority:
- (1) older adults for whom the need for Adult Protective Services has been substantiated and the service is needed as part of the adult protective services plan;
 - (2) older adults who are at risk of abuse, neglect, or exploitation;
 - (3) older adults with extensive ADL or IADL impairments who are at risk of placement in substitute care;
 - (4) older adults with three or more ADL or IADL impairments; and
 - (5) older adults with one or two ADL or IADL impairments.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

SECTION .0300 - SERVICE PROVISION

.0301 SERVICE DELIVERY

In-Home Aide Services must be provided in accordance with the standards established in Rules .0304, .0305, .0306, .0307, and .0310 of this Section for task levels, competency requirements, supervision, and quality assurance requirements regardless of whether the aide performing the tasks is a paid employee or a volunteer under the supervision of an established agency.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0302 ASSESSMENT AND REASSESSMENT OF CLIENT

- (a) The purpose of the initial assessment and regular reassessments is to determine each client's

level of functioning and determine or confirm the need for In-Home Aide Services.

(b) The initial assessment and reassessments must be conducted by an appropriate professional and are prerequisites to providing In-Home Aide Services.

(c) An initial assessment is not a prerequisite when the health or safety of a client is at risk. In these instances the initial assessment must be completed within five working days of the onset of services.

(d) The initial assessment and reassessment must be conducted in the client's home and must address the mental, social, environmental, economic, and physical health status of the client, as well as the ability to perform activities of daily living (ADL's) and instrumental activities of daily living (IADL's).

(e) The initial assessment and reassessments must be signed and dated by the professional responsible for assuring the completion of the initial assessment and reassessments.

(f) An initial assessment must be completed prior to the professional's development of an In-Home Aide Service Plan.

(g) A full reassessment must be completed at least every 12 months or as the client and family situation warrants.

(h) A review of the client and family situation must be completed by an appropriate professional at least quarterly. If a reassessment is conducted, it meets the requirements for a quarterly review.

(i) If the person needs Home Management tasks at Levels I, II, or III, the initial assessment and reassessments must be completed by a social worker or other appropriate professional such as a registered nurse or registered dietitian. If a registered nurse or dietitian is conducting the initial assessment or reassessment at Levels I, II, or III, and the client's social needs appear more extensive than the assessor is able to adequately evaluate, then a social worker must be consulted for further input. If the person needs Home Management tasks at Level IV, the initial assessment and reassessments must be completed by a social worker.

(j) If the client needs Personal Care tasks at Level III, a registered nurse must complete the physical health status and the ADL portions of the initial assessment and reassessments. For Level II Personal Care tasks, if a social worker or registered dietitian is conducting the initial assessment or reassessment and the client's personal care needs appear more extensive than the assessor is able to adequately evaluate, then an appropriate health professional must be consulted for further input.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0303 IN-HOME AIDE SERVICE PLAN

(a) Each client must have an In-Home Aide Service Plan which is based on the initial assessment and regular reassessments.

(b) The In-Home Aide Service Plan must include:

- (1) measureable client outcome goals;
- (2) In-Home Aide Service level or levels to be provided;
- (3) specific tasks to be performed;
- (4) frequency of service provision;
- (5) anticipated duration of the service; conditions for continuing or discontinuing service;
- (6) signature of client or designated person indicating agreement with the service plan;
- (7) signature of agency's professional staff developing the service plan; and
- (8) a physician's signature if required by a specific funding source.

(c) All changes in tasks must be documented and dated on the In-Home Aide Service Plan by the responsible professional.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0304 COMPETENCY REQUIREMENTS

(a) Aides who provide In-Home Aide Services must meet the competency requirements for the level of service they are regularly required to perform. In addition, an aide performing any tasks in Level III Personal Care must meet the competency requirements for that level and be registered as a Nurse Aide I with the NC Board of Nursing. Meeting competency requirements includes a correct demonstration of the tasks to an appropriate professional.

(b) The agency employing the in-home aides must maintain documentation of each aide's competence; this includes verification of knowledge of all content areas and ability to correctly perform all tasks at the level of service regularly provided. If the aide is required to perform selective tasks at a higher level, documentation of competence in the specific tasks is also required. An aide must be fully competent at the current level of service provision before being assigned tasks at a higher level.

(c) By July 1, 1991, regardless of the level of service to which the aide is assigned, demonstrated competence for the specific tasks assigned to that aide must be documented before allowing the aide to perform the tasks independently.

(d) Competency requirements for all levels except Level III Personal Care are applicable on July 1, 1993 for all persons hired after that date. All aides performing any Level III Personal Care tasks must have met the NC Board of Nursing's competency requirements and be registered as a Nurse Aide I with the North Carolina Board of Nursing by January 1, 1991 or within four months of being assigned these tasks. Each service provider agency is responsible for ensuring that competency testing is appropriately administered.

(e) A listing of the tasks and related areas of competence for each level from which a competency test for the aide will be drawn is provided in Rule .0305 of this Section.

(f) Each service provider agency is responsible for insuring that its aides have sufficient training to pass a competency test for the level of service the aides will regularly provide.

(g) In the event that a spouse, parent, child or sibling is paid to provide care, the service provider agency can make a determination that the family member is capable of providing the care needed without requiring any formal training. The family member must demonstrate competence to perform the tasks needed by the client to an appropriate professional. When the family member provides Personal Care at Level III, he must meet the NC Board of Nursing's competency requirements and be registered as a Nurse Aide I with the NC Board of Nursing within four months of being assigned these tasks.

(h) Demonstration of competence in the presence of an appropriate professional can take place in a variety of settings including, but not limited to, the classroom, laboratory, local agency, or the home of the client and family.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0305 IN-HOME AIDE TASKS AND REQUIRED COMPETENCIES

(a) Tasks to be performed and required competencies for In-Home Aides performing Level I - Home Management are as follows:

Tasks

Home Management

- Pay bills as directed by client
- Provide transportation for medical appointments and shopping
- Clean and care for clothing: ironing, simple mending, laundering
- Do basic housekeeping tasks: sweeping, vacuuming, dusting, mopping, dishes
- Make minor repairs to house and furnishings
- Make un-occupied bed
- Recognize and report changes in health and environment
- Identify medications for client
- Provide companionship and emotional support
- Prepare simple meals
- Shop for food from verbal or written instruction
- Observe and report symptoms of abuse, neglect, and illness to proper professional

Required Competencies

Communication Skills

- Methods of communication
- Maintaining control
- Observing, documenting and reporting
- Confidentiality

Mental Health and Illness

- Characteristics of good mental health
- Personality differences

Family Dynamics

- Cultural and Ethnic Life-styles
- Role of families in meeting individual needs

Home Management Skills

- Maintaining a clean and safe environment
- Basic housekeeping
- Shopping
- Clothing care and repair
- Paying bills

Food and Nutrition

- Role of nutrition in

promoting good health

- Balanced meal preparation and food handling and storage

Disabled Adults

- Life long aging process
- Disabled persons as individuals
- Specific needs of older persons

Understanding Basic Human Needs

- Physical and psychological needs
- Needs hierarchy
- Client and Patient Rights

Medications

- Retrieve and identify medications for client
- Do's and don'ts of medication

Responding to Emergencies

- Fire
- Personal injury and sickness
- Observe and report systems of abuse, neglect, exploitation, illness, or unsafe environment to proper professionals
- Other dangers

Personal Hygiene (worker)

- Expectations regarding cleanliness, odors, smoking

Safety Measures

- Household safety tips
- Body mechanics for aides
- Transporting of client

Inappropriate Tasks

- Personal care
- Deviation from care plan
- Other inappropriate tasks

(b) Tasks to be performed and required competencies for In-Home Aides providing Level II - Home Management and Personal Care are as follows:

Tasks

Home Management

- Assist in following budget prepared by case manager
- Assist to find and use community resources
- Perform reading and writing tasks

Required Competencies

Communication Skills

- Roles of the service delivery team
- Plan of care
- Report writing

Mental Health and Illness

- Demonstrate and model simple altering and mending techniques
- Demonstrate and model housekeeping
- Assist in organizing household routines
- Assist in making or purchasing clothing or other household items
- Plan menus using food guide
- Assist with developing a market order and shopping
- Demonstrate and model food handling, preparation and storage

Personal Care

- Assist ambulatory client with mobility and toileting
- Provide care for normal, unbroken skin
- Assist with personal hygiene, (mouth care, hair and scalp grooming, fingernails and bathing; shower, tub, bed, basin)
- Cut and trim hair
- Shave client (electric and safety razor)
- Provide basic first aid
- Apply ace bandages, TED's, binders (demonstrated competency verified by R.N.)
- Make occupied bed
- Assist limited function patient with dressing
- Observe, record and report self-administered medications
- Apply and remove prosthetic devices for stable clients (demonstrated competency verified by R.N.)
- Assist with feeding clients with special conditions (no swallowing difficulties)
- physical activity and
- Assist and encourage physical activity and prescribed exercise
- Assist client with self-monitoring of temperature, pulse, blood pressure and weight (demonstrated competency verified by R.N.)

- Effects of stress
- Defense mechanisms
- Dementia

Family Dynamics

- Family life cycle
- Issues at each stage of life
- Effects of disruption

Home Management Skills

- Housekeeping techniques and routines
- Demonstrating and modeling homemaking tasks
- Working within a budget
- Clothing and household supply purchasing
- Knowledge and use of community resources

Food and Nutrition

- Planning menus from a food guide
- Developing a market order
- Principles of food preparation
- Following a prescribed diet

Ill and Disabled Adults

- Diseases of the elderly
- Coping with chronic illness

Special Care Skills

- Assist with feeding clients with special conditions (excluding swallowing difficulties)
- Application of ace bandage, TED's, binders
- Assist and encourage

prescribed exercise

- Assist ambulatory client with mobility and toileting
- Assist limited function client with dressing
- Making occupied bed
- Assist with application and removal of prosthetic devices

Personal Hygiene (client)

- Assist with bathing (bed, tub, shower, basin)
- Assist with mouth care

- Assist with hair and scalp grooming (cut and trim hair)
- Assist with fingernail care (clean and file)
- Shaving clients (electric and safety razor)
- Normal skin care

Medications

- Reminding and reinforcing self-administered medications
- Observe, report, record self-administered medications

Abuse and Neglect

- Recognizing and reporting criteria (age specific)

Infection Control

- Preventing the spread of diseases
- Hand washing techniques

Basic First Aid

- Principles of cardio-pulmonary Resuscitation
- Taking temperature, pulse, height and weight
- Taking blood pressure

Inappropriate Tasks

(c) Tasks to be performed and required competencies for In-Home Aides providing Level III - Home Management and Level III - Personal Care are as follows:

Tasks

Home Management

- Demonstrate securing and caring for household furnishing
- Teach basic sewing and use of sewing machine
- Demonstrate how to plan for a move, locate housing, and organize moving activities
- Teach and reinforce house-keeping methods, home safety, energy conservation, and sanitation skills
- Teach and reinforce personal hygiene and self care, reinforce sound health care practices, and personal safety techniques
- Take and accompany to medical

Required Competencies

Communication Skills

- Promoting client independence
- Strategies for guiding, supporting, and encouraging
- Medical terminology
- Documentation

Mental Health and Illness

- Substance abuse
- Mental retardation
- Types of mental disorders

Principles of Adult Education

- How Adults Learn
- "Let's Do" teaching

appointments; reinforce special diet routines; monitor treatment plans

- Teach and reinforce household budgeting and planning skills; teach proper use of credit
- Demonstrate and reinforce comparison shopping and good consumer practices with food, clothing and furnishings
- Teach and reinforce management of time and resources, including work simplification techniques
- Teach and reinforce appropriate food handling and cooking skills
- Monitor and reinforce family progress on protective service plan goals

Personal Care

(Tasks subject to nurse supervision requirements of the Nursing Practice Act.)

- Assist with feeding clients with special conditions
- Give bed bath
- Make occupied bed
- Assist with mobility, gait training using assistive devices
- Assist with range of motion exercises
- Assist limited function patient with dressing
- Take and record temperature, pulse, blood pressure, height and weight, respirations
- Observe, record and report self-administered medications
- Apply and remove prosthetic devices for stable client
- Apply ace bandages, TED's, binders
- Assist with scalp care
- Trim toenails for clients without diabetes or peripheral vascular disease
- Empty and record drainage of catheter bag
- Shave clients with skin disorders
- Administer enemas
- Insert rectal tubes and flatus bags
- Bowel and bladder retraining
- Collect and test urine or fecal specimens
- Perineal care

Food and Nutrition

- Comparison Shopping
- Principles of therapeutic (specialized) diets
- Purchasing, planning and preparing therapeutic (specialized) diets
- Observing dietary treatment plans

Infection Control

- Isolation techniques
- Universal precautions
- Application in the home

Death and Dying

Personal Care Track

Personal Hygiene

- Bed bath
- Shampoo in bed
- Shave client with skin disorders
- Trim toenails (no diabetes or peripheral vascular disease)
- Perineal and catheter care

Treatment Techniques

- Assist with feeding clients with special conditions
- Force and restrict fluids
- Care of non-infected skin ulcers
- Clean dressing changes (non-sterile)
- Vaginal douches
- Apply prescribed heat and cold
- Assist client in understanding medical orders and routines, encourage compliance
- Intake and output
- Take respirations

Elimination and Treatment

- Empty and record drainage of catheter bag
- Bowel and bladder retraining
- Collect and test urine or fecal specimens
- Insert rectal tube and flatus bag
- Apply condom catheters
- Administer enemas
- Use of bedpans and urinals

PROPOSED RULES

- Apply condom catheters
- Chair and stretcher transfer
- Turn and position
- Safety measures (side rails, mitts, restraints)
- Change non-sterile dressings
- Force and restrict fluids
- Apply prescribed heat and cold
- Care for non-infected decubitus ulcers
- Assist clients in understanding medical orders and routines, encourage compliance
- Assist with purchase and preparation of diet food specified by professional
- Vaginal douches after instruction
- Assist with prescribed physical and occupational therapy
- Plan menus for special diets
- Monitor dietary treatment plan, provide feedback to professional

Tasks With Special Training (Requires Nurse Aide II registration with the NC Board of Nursing)

- Administer gastrostomy tube feedings
- Perform in and out bladder catheterizations
- Change sterile dressings

Other Training Techniques

- Apply and remove EKG monitor leads
- Post mortem care
- Gastric suction (maintenance)
- Turn, cough and deep breath
- Restorative services

Body Mechanics

- Transfer techniques
- Use of lifts
- Assistive devices
- Assist with prescribed physical and occupational therapy

Safety Measures

- Side rails, mitts restraints

Basic First Aid

- Cardiopulmonary Resuscitation

Home Management Track

Home Management Skills

- Teaching housekeeping skills
- Planning and organizing moving activities
- Energy conservation
- Basic mending and sewing and use of sewing machine
- Home safety skills

Financial Management

- Setting family goals
- Developing a family budget
- Making good budgeting and spending choices
- Use of credit
- Consumer protection practices

Resource Management

- Securing and caring for household furnishings
- Teaching management of time and resources
- Locating housing
- Work simplification techniques

Self Care

- Personal hygiene and health care practices
- Personal safety techniques

- Following treatment plans

Family Dynamics

- Understanding dysfunction in families
- Impact of substance abuse
- Reinforce new skills and patterns in poorly functioning families

(d) Tasks to be performed and required competencies for In-Home Aides providing Level IV - Home Management are as follows:

Tasks

Home Management

- Provide supervision and role modeling of appropriate care and supervision when family is available but unable to perform caretaker duties due to physical or emotional illness (under close case supervision by social worker)
- Implement strategies developed on social work plan including arranging transportation, housing and other auxiliary services (under close case supervision by social worker)
- Demonstrate management of food resources and menu planning (under close case supervision by social worker)
- Provide case tracking and follow up to social work staff by observing families in home environment
- Assist professionals in establishing and maintaining various client groups
- Provide tracking of household budgets with clients
- Identify indicators of risks to families and appropriately report to social worker

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0306 TIME FRAMES FOR COMPLETING COMPETENCY REQUIREMENTS

The following time frames for completing competency requirements for each level of In-Home Aide Services shall apply:

- (1) Level I. Competency requirements consist of demonstration of knowledge and skills indicated for Level I tasks listed in Rule

Required Competencies

Family Dynamics

- Characteristics and interventions for multi problem families
- Impact of loss, separation
- Family violence
- Confrontation skills
- Principles of adult learning

Home Management Skills

- Planning moves
- Understanding eviction procedures
- Elimination of household safety hazards relevant to client functioning

Protective Services

- Legal base and liability
- Factors of increased risk for abuse or neglect
- Indicators of mental and emotional functioning

.0305 of this Section. Competency requirements for Level I must be met within one year of employment as a Level I aide.

- (2) Level II. Competency requirements consist of demonstration of knowledge and skills indicated for Level II tasks listed in Rule .0305 of this Section. Competency requirements for Level II must be met within one year of employment as a Level II aide.

- (3) Level III. This level is tracked for either Home Management or Personal Care and

shall consist of the following competency requirements:

- (a) Home Management Track. Competency requirements consist of demonstration of knowledge and skills indicated for Level III Home Management tasks listed in Rule .0305 of this Section. Competency requirements for Level III Home Management must be met within one year of employment at this level.
- (b) Personal Care Track. Competency requirements consist of demonstration of knowledge and skills indicated for Level III Personal Care tasks and registration as a Nurse Aide I with the NC Board of Nursing. Level III Personal Care Tasks are listed in Rule .0305 of this Section. Aides performing Level III Personal Care tasks must complete training or competency testing, or both within four months of employment at this level.
- (4) Level IV. Competency requirements consist of demonstration of knowledge and skills indicated for Level IV tasks listed in Rule .0305 of this Section. Competency requirements for Level IV must be met within one year of employment as a Level IV aide.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0307 AIDE SUPERVISION

(a) It is the responsibility of the agency providing the In-Home Aide Service to assure that supervision is given to all aides.

(b) Regardless of the level of tasks performed, supervisory home visits must be made at least twice during the first month of the aide's employment.

(c) Following the first month of the aide's employment, supervisory home visits must be made as follows:

- (1) Level I - at least quarterly;
- (2) Level II - at least quarterly;
- (3) Level III - at least every sixty days; and
- (4) Level IV - at least every sixty days.

(d) The frequency of aide supervision must be increased as needed to respond to the capabilities of the aide and the needs of the client.

(e) Each service provider agency must assure at least some portion of the supervisory visits occur when the aide is providing care to clients.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0308 SELECTION OF AIDES

The following persons shall be allowed to serve as in-home aides:

- (1) Non-relatives who are 18 years of age or older who are qualified to perform the tasks needed by the client.
- (2) Relatives of the client, who for this purpose are parent, spouse, child or sibling, who are 18 years of age or older and who give up employment or the opportunity for employment in order to perform the service and who are qualified to perform the tasks needed by the client.

Note: Persons who cannot serve as in-home aides are those under 18 years of age; those who are not qualified to perform the tasks needed by the client; and those who are relatives of the client, who for this purpose are parent, spouse, child, or sibling; who are unemployed or who do not have to give up employment in order to provide the service.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0309 CLIENT RECORDS

Records must be kept for each In-Home Aide Services client and must include:

- (1) documentation of request or authorization for services;
- (2) a copy of the completed initial assessment;
- (3) copies of all completed reassessments;
- (4) copies of the initial and any revised In-Home Aide Services Plans;
- (5) documentation of significant client information;
- (6) documentation of client eligibility;
- (7) documentation of quarterly reviews; and
- (8) documentation notifying client of service reduction, denial or termination.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

.0310 QUALITY ASSURANCE REQUIREMENTS

All agencies providing In-Home Aide Services must be either certified or licensed as a home-health agency, or accredited through one of the following accreditation organizations or other organizations recognized by the Department of Human Resources after July 1, 1991, by July 1, 1996:

- (1) North Carolina Accreditation Commission for In-Home Aide Services;
- (2) National HomeCaring Council;
- (3) Joint Commission on Accreditation of HealthCare Organizations (Home Care accreditation); or

- (4) National League for Nursing.

Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 13 .0318 - .0319 and repeal rule(s) cited as 11 NCAC 13 .0510.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 10:00 a.m. on May 31, 1991 at the N.C. Department of Insurance, 430 N. Salisbury Street, Dobbs Building, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Fred Mohn, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Fred Mohn at (919) 733-2200 or Ellen Sprekel at (919) 733-4700.

CHAPTER 13 - SPECIAL SERVICES DIVISION

SECTION .0300 - INSURANCE PREMIUM FINANCE COMPANIES

.0318 REQUEST FOR CANCELLATION NOTICE

The ~~notice of request for cancellation notice~~ as described in General Statute ~~58-60(2)~~ 58-35-85(2) shall be signed by the owner or an officer of the premium finance company (the owner or officer's facsimile signature may be used), shall have in bold print at its top the wording "Notice of Cancellation" "Request for Cancellation Notice" and shall include the name and address of the insured; the name and address of the insurance company; the name and address of the premium finance company; the insurance company policy number; a certification that the ten-days notice of intent to cancel has been furnished to the insured; the authority under which the policy is to be cancelled; the date ~~the notice is mailed to the insured; the date the notice is mailed to the~~ the request for cancellation notice is mailed to the insured and to the insurance company; (if different from the insured mailing date) the effective date of cancellation; a notice

stating, "If automobile liability insurance is included, you are cautioned that financial responsibility is required to be maintained continuously throughout the registration period and that operation of a motor vehicle without maintaining such financial responsibility is a misdemeanor, the penalty for which is loss of registration plate, and fine or imprisonment, in accordance with the motor vehicle laws of the State of North Carolina as they may be amended from time to time"; and all other pertinent information.

Statutory Authority G.S. 58-2-40; 58-35-85(2).

.0319 EFFECTIVE DATE OF CANCELLATION

When an insurance premium finance company cancels an insurance policy by using a power of attorney signed by the insured, the effective date of cancellation as stated in the request for cancellation notice shall be at least five days beyond no earlier than the date the ~~notice of cancellation request for cancellation notice~~ request for cancellation notice is mailed to the insurance company.

Statutory Authority G.S. 58-2-40; 58-35-85(2).

SECTION .0500 - BAIL BONDSMEN AND RUNNERS

.0510 MULTIPLE CHARGES AGAINST A SINGLE DEFENDANT (REPEALED)

Statutory Authority G.S. 85C-2(a); 85C-36.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

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 15A NCAC 10D .0002.

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 7:00 p.m. on May 21, 1991 at the Pittsboro Courthouse, Pittsboro, North Carolina.

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 May 6, 1991 to June 5, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife

PROPOSED RULES

Resources Commission, 512 N. Salisbury Street,
Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0002 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Those parts of game lands designated and posted as a "Restricted Management Unit" are closed to all use by the general public, and entry upon such an area for any purpose, except as authorized by permit from the Executive Director of the Wildlife Resources Commission or by authorized personnel in the performance of their duties, is prohibited.

Statutory Authority G.S. 113-134; 113-264;
113-270.3; 113-291.2; 113-291.5; 113-305;
113-306.

* * * * *

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 15A NCAC 10D .0003(d).

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 10:00 a.m. on May 15, 1991 at the Falls Management Center, 11405 Falls of the Neuse Road, Raleigh, North Carolina.

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 May 1, 1991 to May 31, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(d) 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 Butler Falls of Neuse, New Hope and Shearon Harris Game Lands waterfowl hunting is prohibited after 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 live wild animals or wild birds shall be removed from any game land.

Statutory Authority G.S. 113-134; 113-264;
113-291.2; 113-291.5; 113-305.

TITLE 18 - DEPARTMENT OF THE SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of the Secretary of State, Securities Division, intends to amend rule(s) cited as 18 NCAC 6 .1210.

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 10:00 a.m. on May 15, 1991 at the Department of the Secretary of State, Securities Division, 300 N. Salisbury St., Room 404, Raleigh, N.C. 27603-5909.

Comment Procedures: Any interested person may present written comments for consideration

by the Securities Division. The hearing record will remain open for receipt of comments from April 15, 1991, through May 15, 1991. Written comments should be received by the Division by midnight on May 14, 1991, to be considered as part of the hearing record. Comments should be addressed to:

Stephen M. Wallis
Deputy Securities Administrator
Office of the Secretary of State
Securities Division
300 N. Salisbury St.
Room 404
Raleigh, N.C. 27603-5909

Any person may present oral comments at the hearing. Requests to speak should be presented in writing to Mr. Wallis at the above address no later than five days before the date of the respective hearing. Additional comments may be allowed by the Division by sign up at the public hearing as time allows. All presentations will be limited to 5 minutes. No fiscal note has been prepared pursuant to G.S. 150B-11(3) in connection with this proposed change to the administrative rules of the Division, as the proposed

change will not require the expenditure or distribution of State funds.

CHAPTER 6 - SECURITIES DIVISION

SECTION .1200 - EXEMPTIONS

.1210 SECURITIES EXCHGS/AUTO QUOTATION SYS APPROVED/ ADMINISTRATOR

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 11,120]:

- (1) New York Stock Exchange,
- (2) American Stock Exchange,
- (3) Pacific Stock Exchange,
- (4) Midwest Stock Exchange,
- (5) NASDAQ National Market System, and
- (6) Chicago Board Options Exchange.

Statutory Authority G.S. 78A-16(15).

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with **** Amended, ** Adopted**. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as *** Correction**. These changes do not change the effective date of the rule.*

**TITLE 5
DEPARTMENT OF CORRECTION**

**CHAPTER 2
DIVISION OF PRISONS**

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0300 - LIST OF INFRACTIONS

.0301 GENERAL

The following rules govern the conduct of inmates under the custody of the Department of Correction:

- (1) **Attitude Toward Officials.** When in the presence of any state official or any member of the prison staff, inmates shall maintain an attitude of attention and respect.
- (2) **Obedience to Orders.** All inmates will obey promptly and properly any lawful order given them by members of the prison staff.
- (3) **Work.** Any inmate physically and mentally able to work may be assigned employment suitable to his capacity. Each inmate will be expected to work diligently and conscientiously to perform the tasks assigned as well as he is able. Inmates will work steadily at the job they are assigned until ordered to cease by the official in charge. Inmates will not quit or leave their assignment or engage in any other activity unless granted permission to do so by the official in charge. If sick or unable to perform the work assigned, an inmate will report the fact at once to the official in charge. Malingering, shirking, laziness, or carelessness will not be tolerated.
- (4) **Care of Living Quarters.** Inmates will keep their living quarters in a neat, clean and sanitary condition. All authorized clothing and personal effects will be neatly hung or stored in designated places, and no containers for personal effects will be permitted other than those approved by the officer in charge.
- (5) **Personal Cleanliness.** Inmates will observe the ordinary requirements of personal hygiene, bathe and shave as often as necessary, keep teeth clean, and hair neatly cut and properly groomed.
- (6) **Clothing.** Inmates will possess and wear prison clothing only for the grade in which they are classified. Prison clothing will not be mutilated in any way and will be maintained in as presentable a condition as available facilities permit. Inmates are strictly forbidden to exchange articles of clothing or to possess unauthorized clothing.

FINAL RULES

- (7) Contraband. Except as specifically authorized for a proper purpose and under adequate supervision, no inmate will have in his possession or under his control any weapon, instrument or tool that could be used to effect an escape or to aid him in an assault or insurrection; any intoxicant or any controlled substance except as prescribed by a licensed physician; any obscene material; or any unauthorized article of property.
- (8) Bartering and Trading. Inmates will not barter or trade with each other nor with officers or employees, except as specifically authorized by law or regulation.
- (9) Misuse of Prison Supplies. Inmates will not waste, appropriate, or traffic in prison supplies. No food will be taken from the dining room, kitchen, or storerooms of any prison without proper authorization.
- (10) Security of the Facility. Inmates will not participate in activities that threaten the order and security of the facility. Such activities include but are not limited to escapes, riots, insurrections, work stoppages and unauthorized group demonstrations.
- (11) Disorderly Conduct. Inmates will at all times behave in an orderly manner. Fighting, wrestling, or physical encounters of any kind other than those permitted by the authorized recreation program are prohibited. No loud or boisterous talking will be permitted. Booing, whistling or shouting by individuals or groups is forbidden. Shouts of encouragement to participants in authorized athletic contests may be permitted. Belligerent, aggressive, threatening or other conduct which might lead to violence will not be tolerated.
- (12) Agitating. Inmates will not agitate or provoke disturbances.
- (13) Night Rules. Inmates shall be required to be present in their assigned sleeping area when the lights are dimmed for the night. Inmates may be allowed to get up during the night as authorized by the special instructions of the officer in charge of the unit, or unless the inmate obtains permission from the staff member on duty in the sleeping quarters of the inmate.
- (14) Sexual Misconduct. Committing, soliciting, or inciting others to commit a sexual act will be subject to disciplinary action.
- (15) Health. Inmates will not engage in conduct which may be injurious to their health or the health of others, or disruptive to the health care delivery system. This includes but is not limited to self-inflicted injury, feigning physical or mental health illness for any purpose, acts which spread or may spread communicable diseases, misuse of medications, hygiene items, or any other health care devices or supplies.
- (16) Honesty. Inmates will be honest and truthful. False reports, lying, stealing or other dishonest acts may be subject to disciplinary action.
- (17) Legal Assistance. Inmates are not permitted to assist each other with litigation or legal matters. The Department of Correction provides, through contractual services, licensed attorneys for this purpose.
- (18) State and Federal Laws. Inmates will obey all of the laws of the State of North Carolina and the United States of America.
- (19) Gambling. Inmate gambling is prohibited. No inmate is to have in his possession gambling paraphernalia.

*History Note: Statutory Authority G.S. 148-11; 148-13; 15A-1340.7;
Eff. February 1, 1976;
Amended Eff. May 1, 1991; March 2, 1981.*

FINAL RULES

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

APRIL 1991

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC	34 .0505	* Correction
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	12C .0004	Amended
<u>DEPARTMENT OF CORRECTION</u>			
5	NCAC	2D .0801 - .0804	Adopted
		2F .2501 - .2504	Adopted
<u>OFFICES OF THE GOVERNOR/LIEUTENANT GOVERNOR</u>			
9	NCAC	2B Executive Order Number 131 Eff. February 7, 1991 Executive Order Number 132 Eff. February 22, 1991 Executive Order Number 133 Eff. February 22, 1991 Executive Order Number 134 Eff. March 7, 1991	
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC	1B .0202	* Correction
		3C .1902	* Correction
		.1905	* Correction
		3R .0317	* Correction
		14K .0103	* Correction
		.0350	* Correction
		.0366 - .0367	Temp. Adopted Expires 08-27-91
		14P .0102	* Correction
		26I .0101 - .0102	* Correction
		.0104	* Correction
		42W .0003	* Correction
		.0005	* Correction
<u>DEPARTMENT OF INSURANCE</u>			
11	NCAC	15 .0006	Amended
<u>DEPARTMENT OF JUSTICE</u>			
12	NCAC	10B .0207	Amended
<u>DEPARTMENT OF LABOR</u>			

FINAL RULES

13 NCAC 7C .0101 - .0102 Amended

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	2B .0201	** Amended
		2D .1002	** Amended
		.1004	** Amended
		.1005	Amended
		10A .1001	** Adopted
		10B .0115	Amended
		.0118	Amended
		10F .0339	** Amended
		10H .0301	** Amended
		.0806	Amended
		.0808	** Amended
		.0809	Amended
		10I .0003 - .0005	Amended
		13A .0010	* Correction
		.0016 - .0017	Temp. Adopted
			Expires 08-14-91
		18C .0102	* Correction
		20B	* Correction

DEPARTMENT OF REVENUE

17	NCAC	5B .0107	Amended
		.1115	Adopted
		5C .0304	Adopted
		.0401 - .0403	Amended
		.0703	Amended
		.1801 - .1804	Amended
		.2001 - .2002	Repealed
		.2004	Adopted
		.2101 - .2102	Amended
		.2405	Repealed
		6B .0116	Amended
		.3513	Amended

BOARD OF ARCHITECTURE

21	NCAC	2 .0104	** Amended
			Eff. May 1, 1991
		.0108	** Amended
			Eff. May 1, 1991
		.0205	** Amended
		.0216	Adopted
			Eff. May 1, 1991

BOARD OF CPA EXAMINERS

21	NCAC	8A .0105	Amended
		.0301	** Amended
		.0315	Adopted
		8F .0105	** Amended
		8G .0204	** Amended
		.0305	** Amended
		.0310	** Adopted
		.0311	Adopted
		.0312	** Adopted

FINAL RULES

8H	.0005	Amended
8J	.0003	Repealed
	.0007	Amended
	.0008	** Amended
	.0010	Adopted
8K	.0104	** Amended
	.0105	Amended
8M	.0101 - .0102	Adopted
	.0103 - .0104	** Adopted
	.0201	** Adopted
	.0202	Adopted
	.0204	Adopted
	.0206 - .0207	Adopted
	.0301 - .0305	Adopted
	.0306	** Adopted
	.0401 - .0402	Adopted
	.0403	** Adopted

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14G	.0001	Amended
			.0004	Repealed
			.0006	Repealed
			.0008 - .0011	Amended
			.0013	** Amended
			.0014 - .0016	Amended
		14H	.0001 - .0002	** Amended
			.0005	Amended
			.0009	** Amended
			.0012	Amended
			.0018	** Amended
		14I	.0101	Amended
			.0104	Amended
			.0106	Amended
			.0107	** Amended
			.0108	Amended
			.0201 - .0205	Amended
			.0301	** Amended
			.0303	Amended
		14K	.0003	** Amended
			.0007	** Amended
		14L	.0102	Repealed
			.0105 - .0108	Adopted
			.0202	Repealed
			.0204	Repealed
			.0207	Repealed
			.0208	** Amended
			.0209	Amended
			.0211	Amended
			.0214	** Amended
			.0215 - .0216	Adopted

BOARD OF MEDICAL EXAMINERS

21	NCAC	32B	.0309	Temp. Amended Expires 08-15-91
----	------	-----	-------	-----------------------------------

BOARD OF NURSING

FINAL RULES

21	NCAC	36	.0211	Amended
			.0217	Temp. Amended
				Expires 04-01-91
			.0217	Amended
			.0504 - .0505	** Adopted
			.0507	** Adopted

BOARD OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21	NCAC	50	.0106	Amended
			.0202	Amended
			.0306	Amended
			.0409	Amended
			.0503	Amended
			.1004	Amended

OFFICE OF ADMINISTRATIVE HEARINGS

26	NCAC	1	.0101	Amended
			.0104	Amended
		2B	.0104	Amended
		4	.0002 - .0004	Amended

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Community Assistance

<i>4 NCAC 19R .0103 - Waivers</i>	<i>ARRC Objection 2/25/91</i>
<i>4 NCAC 19R .0303 - Distribution of Funds</i>	<i>ARRC Objection 2/25/91</i>
<i>4 NCAC 19R .0304 - Reallocation</i>	<i>ARRC Objection 2/25/91</i>
<i>4 NCAC 19R .0602 - Reporting</i>	<i>ARRC Objection 2/25/91</i>

Energy

<i>4 NCAC 12C .0005 - Forms</i>	<i>ARRC Objection 2/25/91</i>
<i>4 NCAC 12C .0006 - Scope and Purpose of State Set-Aside</i>	<i>ARRC Objection 2/25/91</i>

Hazardous Waste Management Commission

<i>4 NCAC 18 .0309 - Final Site</i>	<i>ARRC Objection 1/18/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 2/25/91</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<i>15A NCAC 16A .0804 - Financial Eligibility</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>15A NCAC 16A .0806 - Billing the HIV Health Services Program</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>

Coastal Management

<i>15A NCAC 7J .0409 - Civil Penalties</i>	<i>ARRC Objection 1/18/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 2/25/91</i>
<i>15A NCAC 7J .1109 - Permit Fee</i>	<i>ARRC Objection 1/18/91</i>
<i>Agency Withdrew Rule</i>	<i>2/25/91</i>

Environmental Health

<i>15A NCAC 18C .0102 - Definitions</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .1532 - Variances and Exemptions</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .1534 - Max Contaminant Levels for Coliform Bacteria</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .2001 - General Requirements</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>

ARRC OBJECTIONS

<i>15A NCAC 18C .2002 - Disinfection</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .2003 - Filtration</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .2004 - Analytical and Monitoring Requirements</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>
<i>15A NCAC 18C .2005 - Criteria for Avoiding Filtration</i>	<i>ARRC Objection 10/18/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/14/90</i>

Solid Waste Management

<i>15A NCAC 13A .0016 - Special Purpose Com Hazardous Waste Facility</i>	<i>ARRC Objection 2/25/91</i>
<i>15A NCAC 13A .0017 - Fee Schedules</i>	<i>ARRC Objection 2/25/91</i>

Wildlife Resources Commission

<i>15A NCAC 10H .0302 - Minimum Standards</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/18/90</i>
<i>15A NCAC 10H .0807 - Classes of Permits</i>	<i>ARRC Objection 2/25/91</i>

HUMAN RESOURCES

Facility Services

<i>10 NCAC 3V .0303 - Insurance Required</i>	<i>ARRC Objection 11/14/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/20/90</i>

Individual and Family Support

<i>10 NCAC 42B .1201 - Personnel Requirements</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>10 NCAC 42C .2001 - Qualifications of Administrator</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>10 NCAC 42C .2006 - Qualifications of Activities Coordinator</i>	<i>ARRC Objection 1/18/91</i>
<i>No Response from Agency</i>	<i>2/25/91</i>
<i>10 NCAC 42C .3301 - Existing Building</i>	<i>ARRC Objection 11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 12/20/90</i>
<i>10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator</i>	<i>ARRC Objection 11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 12/20/90</i>

INSURANCE

Life: Accident and Health Division

<i>11 NCAC 12 .0904 - Requirements for Utilization Review</i>	<i>ARRC Objection 12/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 1/18/91</i>

LICENSING BOARDS AND COMMISSIONS

CPA Examiners

<i>21 NCAC 8M .0306 - Due Professional Care</i>	<i>ARRC Objection 2/25/91</i>
---	-------------------------------

ARRC OBJECTIONS

Cosmetic Art Examiners

21 NCAC 14A .0101 - Definitions	ARRC Objection 2/25/91
21 NCAC 14G .0003 - Space Requirements	ARRC Objection 2/25/91
21 NCAC 14G .0007 - Equipment and Teachers	ARRC Objection 2/25/91
21 NCAC 14I .0103 - Inspections and Reports of Student Hours	ARRC Objection 2/25/91
21 NCAC 14I .0109 - Summary of Cosmetic Art Education	ARRC Objection 2/25/91
21 NCAC 14I .0302 - Library	ARRC Objection 2/25/91
21 NCAC 14L .0101 - Qualifications - Cosmetologist Teachers	ARRC Objection 2/25/91
21 NCAC 14L .0210 - Effect on Student-Teacher Ratio	ARRC Objection 2/25/91

Medical Examiners

21 NCAC 32B .0309 - Personal Interview	ARRC Objection 2/25/91
21 NCAC 32M .0007 - Termination of NP Approval	ARRC Objection 11/14/90
Agency Revised Rule	Obj. Removed 12/20/90

Nursing, Board of

21 NCAC 36 .0217 - Revocation, Suspension, or Denial of License	ARRC Objection 12/20/90
No Response from Agency	1/18/91
Agency Revised Rule	Obj. Removed 2/25/91
21 NCAC 36 .0504 - Certificate of Registration	ARRC Objection 1/18/91
Agency Revised Rule	Obj. Removed 2/25/91
21 NCAC 36 .0505 - General and Administrative Provisions	ARRC Objection 1/18/91
Agency Revised Rule	Obj. Removed 2/25/91
21 NCAC 36 .0507 - Fees	ARRC Objection 1/18/91
Agency Revised Rule	Obj. Removed 2/25/91

Physical Therapy

21 NCAC 48C .0102 - Responsibilities	ARRC Objection 9/20/90
Agency Returned Rule Unchanged	No Action 10/18/90
Agency Revised Rule	Obj. Removed 2/25/91
21 NCAC 48C .0501 - Exemption for Students	ARRC Objection 9/20/90
Agency Returned Rule Unchanged	No Action 10/18/90
Agency Revised Rule	Obj. Removed 2/25/91

Plumbing, Heating and Fire Sprinkler Contractors

21 NCAC 50 .1203 - Disposition of Petitions	ARRC Objection 11/14/90
Agency Revised Rule	Obj. Removed 12/20/90
21 NCAC 50 .1207 - Request to Participate	ARRC Objection 11/14/90
Agency Revised Rule	Obj. Removed 12/20/90

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1210 - Securities Exchgs/Autod Quot. Sys. Approved/Admin	ARRC Objection 12/20/90
Agency Responded to Objection	No Action 1/18/91

STATE PERSONNEL

25 NCAC 1D .0509 - Severance Salary Continuation	ARRC Objection 1/18/91
Agency's Response Unacceptable	2/25/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

16 NCAC 6D .0105 - USE OF SCHOOL DAY

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. _____, _____ S.E.2d _____ (1991)].

15A NCAC 7H .0308 - SPECIFIC USE STANDARDS

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. _____, _____ S.E.2d _____ (1991)].

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
19A	Transportation	Nursing	36
20	Treasurer	Nursing Home Administrators	37
*21	Occupational Licensing Boards	Occupational Therapists	38
22	Administrative Procedures	Opticians	40
23	Community Colleges	Optometry	42
24	Independent Agencies	Osteopathic Examination and Registration	44
25	State Personnel	Pharmacy	46
26	Administrative Hearings	Physical Therapy Examiners	48
		Plumbing, Heating and Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work	63
		Speech and Language Pathologists and Audiologists	64
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX

CUMULATIVE INDEX (April 1991 - March 1992)

1991 - 1992

Pages	Issue
I - 44.....	I - April
44 - 99.....	2 - April

AO - Administrative Order
AG - Attorney General's Opinions
C - Correction
FR - Final Rule
GS - General Statute
JO - Judicial Orders or Decision
M - Miscellaneous
NP - Notice of Petitions
PR - Proposed Rule
SO - Statements of Organization
TR - Temporary Rule

CORRECTION

Division of Prisons, 35 FR, 87 FR

ECONOMIC AND COMMUNITY DEVELOPMENT

Alcoholic Beverage Control Commission, 4 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Health: Epidemiology, 28 PR

Health Services, 9 PR

Wildlife Resources Commission, 84 PR

FINAL DECISION LETTERS

Voting Rights Act, 48

FINAL RULES

List of Rules Codified, 89 FR

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 45

HUMAN RESOURCES

Aging, Division of, 72 PR

Medical Assistance, 9 PR

Mental Health, Developmental Disabilities and Substance Abuse Services, 5 PR, 49 PR

INSURANCE

Special Services Division, 84 PR

LICENSING BOARDS

Architecture, Board of, 30 PR

Physical Therapy Examiners, Board of, 33 PR

PUBLIC EDUCATION

Elementary and Secondary, 29 PR

SECRETARY OF STATE

Securities Division, 85 PR

NORTH CAROLINA ADMINISTRATIVE CODE

The full publication consists of 53 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 are available at one-half the new subscription price.

PRICE LIST FOR THE SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 52	Full Code		All titles	\$750.00		
1	1	1 - 37	Administration	90.00		
2	2	1 - 24	Agriculture	75.00		
3	2	25 - 52	Agriculture	75.00		
4	3	1 - 4	Auditor	10.00		
5	4	1 - 2	ECD (includes ABC)	45.00		
6	4	3 - 20	ECD	90.00		
7	5	1 - 2	Correction	60.00		
8	5	3 - 4	Correction	30.00		
9	6	1 - 4	Council of State			
	7	1 - 12	Cultural Resources	60.00		
10	8	1 - 9	Elections	10.00		
11	9	1 - 4	Governor	45.00		
12	10	1 - 2	Human Resources	30.00		
13	10	3A - 3K	Human Resources	90.00		
14	10	3L - 3R	Human Resources			
			(includes CON)	45.00		
15	10	3S - 3U	Human Resources	30.00		
16	10	4 - 6	Human Resources	30.00		
17	10	7	Human Resources	30.00		
18	10	8 - 9	Human Resources	30.00		
19	10	10	Human Resources	30.00		
20	10	11 - 14	Human Resources	60.00		
21	10	15 - 17	Human Resources	45.00		
22	10	18	Human Resources	75.00		
23	10	19 - 30	Human Resources	90.00		
24	10	31 - 33	Human Resources	30.00		
25	10	34 - 41	Human Resources	60.00		
26	10	42	Human Resources	45.00		
27	10	43 - 51	Human Resources	90.00		
28	11	1 - 15	Insurance	90.00		
29	12	1 - 12	Justice	90.00		
30	13	1 - 6	Labor	30.00		
31	13	7	OSHA	45.00		
32	13	8 - 15	Labor	45.00		
33	14A	1 - 11	Crime Control and Public Safety	45.00		
34	15A	1 - 2	EHNR (includes EMC)	90.00		
35	15A	3 - 6	EHNR	45.00		
36	15A	7	Coastal Management	45.00		
37	15A	8 - 9	EHNR	30.00		
38	15A	10	Wildlife	45.00		

Continued

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
39	15A	11 - 18	EHNR	90.00	_____	_____
40	15A	19 - 26	EHNR		_____	_____
			(includes Breathalyzer)	75.00	_____	_____
41	16	1 - 6	Education	30.00	_____	_____
42	17	1 - 6	Revenue	75.00	_____	_____
43	17	7 - 11	Revenue	60.00	_____	_____
44	18	1 - 7	Secretary of State	30.00	_____	_____
45	19A	1 - 6	Transportation	90.00	_____	_____
46	20	1 - 9	Treasurer	45.00	_____	_____
47	21	1 - 16	Licensing Boards	75.00	_____	_____
48	21	17 - 37	Licensing Boards	75.00	_____	_____
49	21	38 - 70	Licensing Boards		_____	_____
	22	1 - 2	Administrative Procedures	75.00	_____	_____
50	23	1 - 2	Community Colleges	10.00	_____	_____
51	24	1 - 2	Independent Agencies	10.00	_____	_____
52	25	1	State Personnel	60.00	_____	_____
53	26	1 - 4	Administrative Hearings	10.00	_____	_____
(North Carolina Subscribers add 5% sales tax)				Total	_____	_____

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

Subscription years are January 1 through December 31.

MAIL TO:

OFFICE OF ADMINISTRATIVE HEARINGS
POST OFFICE DRAWER 27447
RALEIGH, NORTH CAROLINA 27611-7447

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

PLAC
STAMP
HERE

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

☐ Please enter my subscription for the *North Carolina Register* to start with the _____ issue.
(\$105.00)/year subscription)

☐ Renew *North Carolina Register*

☐ Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____

Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

2. New Address

NAME

ADDRESS

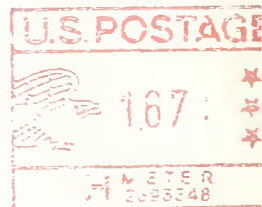
CITY

STATE

ZIP

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

"SAFETY IN
THE LAW"



FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY
VAN HECKE-WETTACH 064-A
CHAPEL HILL

NC 27599