

The **NORTH CAROLINA REGISTER**

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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 sized, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for pages or less, plus fifteen cents (\$0.15) per page for additional pages.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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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
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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
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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
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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
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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
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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 ORDER

**EXECUTIVE ORDER NUMBER 146
SUPPLEMENTING EXECUTIVE ORDER NUMBER 145
REALLOCATING THE COMMUNITY PENALTIES PROGRAM
FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY
TO THE DEPARTMENT OF CORRECTION**

Executive Order No. 145 shall not be implemented until further Executive Order signed by me.

Done in the Capital City of Raleigh, North Carolina, this 28th day of June, 1991.

**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, .0312 - .0315, .0317, .0320, .0334, .0337, .0348, .0351, .0354; 14L .0407, .0506; 14M .0110, .0113, .0206, .0209, .0409 - .0410; 14N .0810; 14O .0105 - .0106, .0310, .0407 - .0409; 18I .0120; 18L .0603, .0701 - .0702, .0806, .1102, .1502, .1507; 18M .0704, .0710, .0818, .1105, .1403, .1405; 18N .0212; 18O .0520 - .0521, .0523; 18P .0903; 18Q .0541, .0808 - .0809; and repeal rule(s) cited as 10 NCAC 14K .0316, .0349; 14L .0309, .0507, .0607 - .0608, .0610, .0710; 14M .0208, .0210, .0613, .0616; 14O .0108 - .0109, .0207, .0410, .0610, .0616, .0619; 18L .0505 - .0510, .0512, .0706, .0802, .1104; 18M .0308, .0707; 18N .0307.

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

The public hearing will be conducted at 10:00 a.m. on August 14, 1991 at the Mission Valley Inn, 3110 Avent Ferry Rd., Raleigh, NC 27606, (919) 828-3173.

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 August 13, 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

(a) This Rule contains the definitions that apply to all the rules in this Subchapter and Subchapters 14L through 14O of this Chapter.

(b) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3 also apply to all the rules in this Subchapter and Subchapters 14L through 14O of this Chapter.

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

- (1) "Administering medication" means direct application of a drug to the body of a client by injection, inhalation, ingestion, or any other means.
- (2) "Adolescent" means a minor from 13 through 17 years of age.
- (3) "Adult" means a person 18 years of age or older or a person under 18 years of age who has been married or who has been emancipated by a court of competent jurisdiction or is a member of the armed forces.
- (4) "Aftercare" means those services provided to substance abuse clients after discharge from a service which facilitates the client's integration or reintegration into society. Activities may include self-help groups, supportive work programs and staff follow-up contacts and interventions.
- (5) "Alcohol abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance (criteria delineated in DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition.)
- (6) "Alcohol dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences (criteria delineated in DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition.)
- (7) "Applicant" means any person who intends to establish, maintain or operate a licensable facility and who applies to the Department for a license to operate a fa-

- cility under the provisions of G.S. 122C, Article 2.
- (8) "Approved supported employment conversion plan" means a planned approach to changing the type of services delivered from ADAP facility-based to supported employment. Approval of the conversion plan is the responsibility of the Regional Director of the Division and the Area Director or his designee if the facility is operated by a contract agency of the area program or other service provider. The Division shall request appropriate personnel from the Division of Vocational Rehabilitation to participate in the review process. The request for approval of the supported employment conversion plan shall include specific written information in the following areas:
 - (A) number of clients to be moved into supported employment placements;
 - (B) types of supported employment models to be used;
 - (C) timeframe for the conversion period;
 - (D) interim proposed facility staffing patterns and responsibilities; and
 - (E) proposed budget for conversion plan.
 - (9) "Area program" means a legally constituted public agency providing mental health, mental retardation and substance abuse services for a catchment area designated by the Commission. For purposes of these Rules, the term "area program" means the same as "area authority" as defined in G.S. 122C-3.
 - (10) "Assessment" means a procedure for determining the nature and extent of the problem for which the individual is seeking service.
 - (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 hyperactivity, attention deficit disorder or other behavioral disorders, or
 - (B) Identified emotional or behavioral disorders such as:
 - (i) delay or abnormality in achieving expected emotional milestones, such as 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.
 - (v) self-injurious or unusually aggressive behavior, or
 - (C) Substantiated physical abuse, sexual abuse, or other environmental situations that raise significant concern regarding the child's emotional well-being.
 - (12) "Certified counselor" means an alcoholism, drug abuse or substance abuse counselor who is certified by the North Carolina Substance Abuse Professional Certification Board.
 - (13) "Child" means a minor from birth through 12 years of age.
 - (14) "Chronically mentally ill adult" means an individual 18 years of age or older who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with his capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons, mental disability is severe and persistent, resulting in long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relations, homemaking, self-care, employment and recreation.
 - (15) "Client record" means a written account of all services provided a client from the time of ~~formal acceptance~~ admission of the client by the facility until ~~termination of services~~. This information is documented on standard forms adopted by the facility which are filed in a standard order-discharge from the facility.
 - (16) "Clinical" means having to do with the active direct treatment/habilitation of a client.
 - (17) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.
 - (18) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted

- standards of practice and the needs of the client.
- (19) "Contested case" means an administrative proceeding under G.S. 150B, Article 3, in which the rights, privileges, or duties of a party are required by law to be determined.
- (20) "Contract agency" means a legally constituted entity with which the area program contracts for a service exclusive of intermittent purchase of service for an individually identified client.
- (21) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.
- (22) ~~(21)~~ "Declaratory ruling" means a formal and binding interpretation as to:
- (A) the validity of a rule; or
 - (B) the applicability to a given state of facts of a statute administered by the Department of Human Resources, or a rule or order of the Department of Human Resources.
- (23) ~~(22)~~ "Detoxification" means the physical withdrawal of an individual from alcohol or other drugs in order that the individual can participate in rehabilitation activities.
- (24) ~~(23)~~ "Developmentally delayed children" means those whose development is delayed in one or more of the following areas: cognitive development, physical development, 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 1½ 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 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.
- (25) ~~(24)~~ "DFS" means the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.
- (26) ~~(25)~~ "Direct care staff" means an individual who provides active direct care, treatment, or rehabilitation or habilitation services to clients. ~~on a continuous and regularly scheduled basis.~~
- (27) ~~(26)~~ "Dispensing medication" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by state and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a client is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".
- (28) ~~(27)~~ "DMH-MR SAS" "DMH/ DD/ SAS" means the Division of Mental Health, Mental Retardation Developmental Disabilities, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27611. 27603.
- (29) ~~(28)~~ "Documentation" means provision of written, dated and authenticated evidence of the delivery of client services or compliance with statutes or rules, e.g., entries in the client record, policies and procedures, minutes of meetings, memoranda, reports, schedules, notices and announcements.
- (30) ~~(29)~~ "Drug abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance (criteria delineated in DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition.)
- (31) ~~(30)~~ "Drug dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences (criteria delineated in DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition.)

- (32) ~~(34)~~ "DWI" means driving while impaired, as defined in G.S. 20-138.1.
- (33) ~~(32)~~ "DWI substance abuse assessment" means a service provided to persons charged with or convicted of DWI to determine the presence of chemical dependency. The "assessment" involves a face-to-face interview with a substance abuse professional.
- (34) ~~(33)~~ "Early Intervention Services" means those services provided for infants and toddlers specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations. This adoption by reference is in accordance with G.S. 150B-14(c).
- (35) ~~(34)~~ "Evaluation" means an assessment service which identifies the nature and extent of an individual's problem through a systematic appraisal for the purposes of diagnosis and determination of the disability of the individual and the most appropriate plan, if any, for services. ~~Such appraisal shall include one or more of the following: mental, physical, behavioral, functional, social, economic and intellectual resources of the individual.~~
- (36) ~~(35)~~ "First aid" means emergency treatment for injury or sudden illness before regular medical care is available. First aid includes artificial respiration, the Heimlich maneuver, or other Red Cross first aid techniques for relieving airway obstruction, care of wounds and burns, and temporary administering of splints.
- (37) ~~(36)~~ "Governing body" means those persons who by law, charter, articles of incorporation, partnership agreement, or other legally recognized manner have full legal authority for the overall operation of the facility.
- (38) ~~(37)~~ "Health Services" means those services provided for infants and toddlers specified in Section 303.13 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations. This adoption by reference is in accordance with G.S. 150B-14(c).
- (39) ~~(38)~~ "Hearing" means, unless otherwise specified, a contested case hearing under G.S. 150B, Article 3.
- (40) ~~(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.
- (41) ~~(40)~~ "Hours of operation" means an indication of the minimum operational hours that a service is expected to be available to clients, but not prohibiting the typical closing of a service to accommodate holidays, vacations, staff development activities and weather and facility-related conditions but taking into consideration the type of service being provided.
- (42) ~~(41)~~ "ICF/MR" (Intermediate Care Facility/Mentally Retarded) means a facility certified as having met federal ICF/MR requirements and which provides 24-hour personal care, habilitation, developmental and supportive services to persons with mental retardation or related conditions.
- (43) ~~(42)~~ "Incident" means any happening which is not consistent with the routine operation of the facility or the routine care of a client and that is likely to lead to adverse effects upon a client.
- (43) ~~"Individual goal plan" (for clients with mental retardation or other developmental disabilities) means a written plan which includes measurable, date-specific, short-range objectives which are assessed and developed or restated at least quarterly based on the strengths and needs of the client and which identifies specific staff responsibilities and relates to the annual individual program plan.~~
- (44) ~~"Individual program plan" (for clients with mental retardation or other developmental disabilities) which is sometimes referred to as an "habilitation plan," means a written plan which includes long-range objectives for the client based on evaluations, observations and other client assessment data and which is implemented following admission of the client, and assessed and redeveloped at least annually from the date of placement. The individual program plan includes a written summary of the client's progress regarding previous program plans.~~
- (45) ~~"Individual treatment plan" (for mental health and substance abuse clients) means~~

- a plan of treatment for the client. The plan contains time-specific short and long term goals and strategies for implementing the goals, and identifies direct care staff responsible for the provision of treatment and rehabilitation services to the client. The individual treatment plan is synonymous with the individual service plan.
- (44) ~~(46)~~ "Infant" means an individual from birth through two years of age.
- (45) ~~(47)~~ "Legend drug" means a drug that cannot be dispensed without a prescription.
- (46) ~~(48)~~ "License" means a permit to operate a facility which is issued by DFS under G.S. 122C, Article 2.
- (47) ~~(49)~~ "Medication" means a substance recognized in the official "United States Pharmacopocia" or "National Formulary" intended for use in the diagnosis, mitigation, treatment or prevention of disease.
- (48) ~~(50)~~ "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (49) ~~(51)~~ "Neighborhood" - See "residential setting".
- (50) ~~(52)~~ "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (51) ~~(53)~~ "Operator" means the designated agent of the governing body who is responsible for the management of a licensable facility.
- (52) "Outpatient" or "Outpatient service" means the same as periodic service.
- (53) ~~(54)~~ "Parent" means the biological or adoptive mother or father of a minor client or person who has been appointed to serve as a surrogate parent.
- (54) "Periodic service" means a service provided through short, recurring visits for persons who are mentally ill, developmentally disabled or substance abusers.
- (55) "Physical examination" means the procedures used by a physician or physician extender on behalf of a physician to determine the physiological and anatomical condition of the client. Physical examination also means medical examination.
- (56) "Physician extender" means a nurse practitioner or a physician assistant approved to perform medical acts by the Board of Medical Examiners of the State of North Carolina.
- (57) "Preschool age child" means a child from three through five years of age.
- (58) "Private facility" means a facility not operated by or under contract with an area program.
- (59) "Program evaluation" means the systematic documented assessment of program activity to determine the effectiveness, efficiency and scope of the system under investigation, to define its strengths and weaknesses and thereby to provide a basis for informed decision-making.
- (60) "Provider" means an individual, agency or organization that provides mental health, mental retardation or substance abuse services.
- (61) "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.
- (62) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.
- (63) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.
- (64) "Psychotherapy" means a form of treatment of mental illness or emotional disorders which is based primarily upon verbal or non-verbal communication with the patient. Treatment is provided by a trained professional for the purpose of removing or modifying existing symptoms, of attenuating or reversing disturbed patterns of behavior, and of promoting positive personality growth and development.
- (65) "Psychotropic medication" means medication with the primary function of treating mental illness or personality or behavior disorders. These medications include, but are not limited to, antipsychotics, antidepressants, neuroleptics, lithium and minor tranquilizers.

- (66) "Qualified alcoholism professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.
- (67) "Qualified developmental disabilities professional" means an individual holding at least a baccalaureate degree in a discipline related to developmental disabilities, and at least two years of supervised habilitative experience in working with the mentally retarded or otherwise developmentally disabled or holding a baccalaureate degree in a field other than one related to developmental disabilities and having three years of supervised experience in working with the mentally retarded or otherwise developmentally disabled.
- (68) "Qualified drug abuse professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.
- (69) "Qualified mental health professional" means any one of the following: psychiatrist, psychiatric nurse, practicing psychologist, psychiatric social worker, an individual with at least a master's degree in a related human service field and two years of supervised clinical experience in mental health services or an individual with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.
- (70) "Qualified nutritionist" means an individual who has a Master's degree in nutrition, nutrition education or public health nutrition and who may or may not be a registered dietitian.
- (71) "Qualified substance abuse professional" means an individual who is:
- (A) certified by the North Carolina Substance Abuse Professional Certification Board; or
 - (B) a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.
- (72) "Registered dietitian" means an individual who has successfully completed a national examination for the Commission on Dietetic Registration and maintains registration with that commission through approved continuing education activities and events.
- (73) "Rehabilitation" means training, care and specialized therapies undertaken to assist a client to reacquire or maximize any or all lost skills or functional abilities.
- (74) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis, or to explicate some principle or effect. The term "research" as used in this document means research which is not standard or conventional; involves a trial or special observation which would place the subject at risk for injury (physical, psychological or social injury), or increase the chance of disclosure of treatment; utilizes elements or steps not ordinarily employed by qualified professionals treating similar disorders of this population; or is a type of procedure that serves the purpose of the research only and does not include treatment designed primarily to benefit the individual.
- (75) "Residential setting" means a living area or zone in which the primary purpose is family residential living and which may be located in an area zoned either urban residential or rural.
- (76) "Respite discharge" means that point in time when no additional incidents of respite services are anticipated. ~~and the client record is closed.~~
- (77) "Respite episode" means an uninterrupted period of time during which a client receives respite services. ~~The episode may vary in length from one hour or less to one month.~~
- (78) "Screening" means an assessment service which provides for a brief ~~face to face~~ appraisal of each individual who presents himself for services, in order to determine the nature of the individual's problem and his need for services. Screening may also include referral to other appropriate community resources.
- (79) "Secretary" means the Secretary of the Department as defined in G.S. 122C-3.

(80) "Service" means an activity or interaction intended to benefit another, with, or in behalf of, an individual who is in need of assistance, care, habilitation, intervention, rehabilitation or treatment.

(81) ~~(80)~~ "Severely physically disabled person" means for the purpose of ADAP (Adult Developmental Activity Program) a person:

(A) who has a severe physical disability which seriously limits his functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills);

(B) who has one or more physical disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia and end stage renal disease; and

(C) whose habilitation or rehabilitation can be expected to require multiple habilitation or rehabilitation services over an extended period of time.

(82) ~~(81)~~ "Sheltered employment" means a facility's provision of work and work training by:

(A) subcontracting from industries in the community and bringing work to the facility to be performed; or

(B) manufacturing its own products in the facility.

Clients served in a sheltered employment model are those who consistently achieve earning levels exceeding one-half of the minimum wage but who are not ready for independent employment activities.

(83) ~~(82)~~ "Staff member" means any individual who is employed by the facility.

(84) ~~(83)~~ "Substantially mentally retarded person" means for the purpose of ADAP a person who is mentally retarded to the degree of seriously limiting his functional capabilities, whose habilitation or rehabilitation can be expected to extend over a period of time, and including:

(A) moderately mentally retarded persons;

(B) severely mentally retarded persons;

(C) profoundly mentally retarded persons; or

(D) mentally retarded persons with a handicapping condition so severe as to

lack the potential for employment at this time, either in a sheltered or competitive setting. In addition, such individuals must have a deficit in self-help, communication, socialization or occupational skills and be recommended by the vocational rehabilitation counselor for consideration of placement in an ADAP.

(85) ~~(84)~~ "Support services" means services provided to enhance an individual's progress in his primary treatment/habilitation program.

(86) ~~(85)~~ "Supported employment" means a day/night service which involves paid work in a job which would otherwise be done by a non-disabled worker. Supported employment is carried out in an integrated work site where a small number of people with disabilities work together and where the work site is not immediately adjacent to another program serving persons with disabilities. It includes intensive involvement of staff working with the individuals in these integrated settings.

(87) ~~(86)~~ "Toddler" means an individual from one through three years of age.

(88) ~~(87)~~ "Treatment" means the process of providing for the physical, emotional, psychological and social needs of clients through services.

(89) "Treatment/habilitation plan" means a plan in which one or more privileged professionals, working with the client and in some cases family members or other service providers, document which interventions will be provided and the goals, objectives and strategies that will be followed in providing services to the client.

(90) ~~(88)~~ "Twenty-four hour facility in which medical care is an integral component" means a facility in which:

(A) the medication needs of clients may be evaluated, medication prescribed and laboratory tests ordered to assist in the diagnosis, treatment and monitoring of problems associated with the mental health, mental retardation or other developmental disabilities or substance abuse disorder of clients; and

(B) proper referral of the client is made to medical specialists when needed.

(91) "Twenty-four hour service" means a service which is provided to a client on a 24-hour continuous basis.

Statutory Authority G.S. 122C-3; 122C-26; 143B-147.

SECTION .0300 - FACILITY AND PROGRAM MANAGEMENT

.0312 SCREENING

(a) The governing body shall develop and implement written screening policies establishing a systematic means of screening determining each individual's need for services. or whether he shall be referred to another service.

(b) The ~~policy~~ policies shall ~~designate who is deemed qualified~~ specify the qualifications, based on education and experience, ~~to of persons who may~~ make screening determinations.

(c) When possible and appropriate, and with client consent, family members or other persons significantly involved with the client's life client shall be encouraged to participate in the screening of the client.

(d) Screening shall include the following:

- (1) an assessment of the individual individual's presenting problems related to the services offered by the facility; and problem or need;
- (2) disposition (referrals and recommendations); an assessment of whether or not the facility can provide services to address the individual's needs; and
- (3) the disposition, including referrals and recommendations.

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

.0313 ADMISSION AND DISCHARGE

(a) The governing body shall develop and implement written admission policies and procedures for each facility which shall include at least regarding the following:

- (1) criteria for admission;
- (2) criteria for discharge, which, in 24 hour facilities, shall be consistent with G.S. 122C-61; and
- (3) referrals and transfers.
- (4) designation of staff who are deemed qualified to admit clients;
- (2) admission criteria;
- (3) procedures for compliance with Article 5 of Chapter 122C of the N.C. General Statutes, Parts 2, 3, 4, 5, 7 and 8 as applicable; and
- (4) in residential facilities, except for respite services, requirements for an agreement between the facility and the client or his legally responsible person which shall delineate the responsibilities of both parties for the provision of medical and dental services, education and other needs.

(b) For voluntary admissions each application for admission and consent for treatment/habilitation shall be signed by the client or legally responsible person upon admission to a facility. For involuntary admissions, documentation of the commitment process shall be maintained by the facility.

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

.0314 ASSESSMENT

(a) The governing body shall develop and implement written policies and procedures relative to assessment requirements for individuals served by the regarding admission assessments for clients in each facility.

(b) Mental Health Facilities:

(4) 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 individual admission assessment within 24 hours of admission; mental status; admitting diagnosis; and determination of need for additional information; diagnostic tests or evaluations;

(B) A preliminary individual treatment plan within 72 hours of admission; and

(C) 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:

(4) 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 pre-school 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 (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 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) 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 in-

- cluding 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.
- (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.
- (b) Each facility shall complete an initial admission assessment for each client prior to the delivery of treatment/habilitation services. The initial assessment shall include:
- (1) the presenting problem or reason for admission;

- (2) the client's needs and strengths, and when appropriate, the needs and strengths of family members who may contribute to the services provided to the client;
- (3) a provisional or admitting diagnosis with an established diagnosis determined within 30 days of admission, except for clients admitted to a detoxification or other 24-hour medical program for any length of time, who shall have an established diagnosis upon admission;
- (4) a description of current status including the following, when applicable:
- (A) mental status, including suicide potential;
- (B) developmental condition or impairment;
- (C) substance use or abuse;
- (D) legal status or circumstances;
- (E) medical condition; and
- (F) family and other support systems;
- (5) a description of the client's condition from family or significant others, when available; and
- (6) the disposition, including referrals and recommendations.
- (c) Data gathered during a screening or from other sources within 30 days prior to admission may be used to complete the assessment.
- (d) For a client expected to receive services for more than 30 days, the admission assessment shall include the following within 30 days of admission:
- (1) a social and family history;
- (2) a medical history; and
- (3) when applicable, histories and assessments as follows:
- (A) psychiatric, including previous treatment;
- (B) substance abuse, including previous treatment;
- (C) developmental, including previous services received;
- (D) educational;
- (E) auditory and visual;
- (F) nutritional; and
- (G) vocational.

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

.0315 TREATMENT/HABILITATION PLANNING AND DOCUMENTATION

- (a) The governing body shall ~~have develop and implement~~ written policies and ~~procedures for the development of~~ regarding individual ~~treatment and program~~ treatment/habilitation plans and the ~~assignment~~ qualifications based on edu-

cation and experience of staff responsibilities who will be responsible 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 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. 99-457 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 40 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 40 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 disability 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) 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.
- (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 responsible 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 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.
 - (B) 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.
- (b) A treatment/habilitation plan shall be based upon an assessment of the client's condition, as-

sets and needs, and the resources to meet these needs.

(c) The parent or the legally responsible person of a minor shall have the opportunity to participate in the development and implementation of the minor client's individual treatment/habilitation plan.

(d) The parent, with client consent, or the legally responsible person of an adult shall have the opportunity to participate in the development and implementation of the adult client's individual treatment/habilitation plan.

(e) Clinical responsibility for the development and implementation of the treatment/habilitation plan shall be designated.

(f) Initial treatment/habilitation objectives shall be documented, if services are to be provided, prior to the establishment and implementation of the comprehensive treatment/habilitation plan.

(g) Except as provided in Paragraphs (i) through (j) of this Rule, a comprehensive plan shall be developed and initiated within 30 days of admission for clients who are expected to receive services from the facility beyond 30 days. The plan shall include, as appropriate to the client's needs:

- (1) documentation of the established diagnosis;
- (2) time-specific, measurable goals for treatment/habilitation;
- (3) general strategies or procedures to be undertaken in order to meet goals and the direct care staff responsible for implementation;
- (4) time-specific, measurable education or treatment goals for family or significant others, if applicable; and
- (5) a schedule for time-specific planned reviews, which may be set, in addition to those required in Paragraph (h) of this Rule.

(h) A full review of each client's treatment/habilitation plan shall be conducted at least annually by the responsible professional in accordance with the facility's quality assurance plan, as determined by 10 NCAC 14K .0319. The review shall include:

- (1) the client's continuing need for service; and
- (2) a continuation or update of the client's treatment/habilitation plan as defined in Paragraph (g) of this Rule.

(i) The goals for a client who receives services from facilities providing day activity or alternative family living, half-way house, therapeutic camp or group home services in which the supervision and therapeutic intervention are lim-

ited to sleeping time, home living skills and leisure time activities, may be limited to life-skill, social or recreational goals.

(j) The goals for a client who receives services from a community respite facility may be limited to the special needs of the client, including medications to be administered, dietary considerations and expectations regarding other services.

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

.0316 DISCHARGE/AFTERCARE (REPEALED)

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

.0317 CLIENT RECORDS

(a) Facilities shall maintain a client record for each individual admitted to the facility.

(b) Each client record shall contain an identification face sheet which includes at least the following identifying information:

- (1) client name (last, first, middle, maiden);
- (2) client record number;
- (3) client address;
- (4) also known as;
- (5) date of birth;
- (6) race, sex and marital status;
- (7) social security number;
- (8) home telephone number;
- (9) work telephone number;
- (10) name, address and telephone number of legally responsible person or next of kin;
- (11) admission date; and
- (12) discharge date.

(c) Client specific requirements delineated in Rules .0312 through .0316 of this Subchapter shall be documented in the client record.

(d) Information required in other rules in this Subchapter (such as, but need not be limited to, medication prescribing, administering medication, medication education, restraint or seclusion and laboratory services) shall be documented in the client record.

(e) Additional information which shall be included in the client record may include the following:

- (1) diagnostic tests, assessments, evaluations, consultations, referrals, support services or medical services provided;
- (2) known allergies or hypersensitivities;
- (3) major events, accidents or medical emergencies involving the client;
- (4) consent for, and documentation of, release of information;
- (5) documentation of applied behavior modification which includes at risk or other intrusive interventions, including authori-

zation, duration, summaries of observation and justification;

(6) conferences or involvements with the client's family, significant others or involved agencies or service providers;

(7) documentation of attempts to ascertain why a client is not attending a service in accordance with his established schedule; and

(8) documentation of attendance in services other than residential services.

(f) All client record entries shall include the date of entry and authentication by the individual making the entry. Time shall be recorded based upon the nature of services (e.g., shift notes, medication administration, accidents or injuries, at risk procedures).

(g) All client record entries shall be legible and made in permanent ink or typewritten.

(h) Alterations in client records, which are necessary in order to correct recording errors or inaccuracies, shall be made as follows:

(1) Alterations shall be made by the individual who recorded the entry.

(2) A single, thin line shall be drawn through the error or inaccurate entry with the original entry still legible.

(3) The corrected entry shall be legibly recorded above or near the original entry. An explanation as to the type of documentation error or inaccuracy shall be recorded whenever the reason for the error is unclear.

(4) Alterations include the date of correction and initials of recorder.

(i) Each page in client records originated within the facility shall include the client's name and client record number, when assigned.

(j) Client records shall contain only symbols and abbreviations included on an abbreviation list approved by the facility.

(k) Notations in a client's record shall not personally identify other clients.

(l) Each facility shall designate in writing those individuals authorized to document in client records.

(m) Forms and court orders relative to the admission or commitment of clients shall be incorporated into the client record.

(c) Each governing body shall develop and implement written policies regarding:

(1) the persons authorized to document in service records;

(2) the correct procedures to alter or correct recording errors or inaccuracies;

(3) the documentation and maintenance of information on incident reports;

(4) the transportation of records;

- (5) the safeguard of records against loss, tampering, defacement, or use by unauthorized persons; and
- (6) the assurance of records accessibility to authorized users at all times.
- (d) Each facility shall ensure that:
 - (1) the facts relative to the observed or suspected abuse of a client shall be documented in the service record including reports made by the individual client and actions taken by staff. Opinions related to the abuse or alleged abuse shall not be documented in the service record; and
 - (2) information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143. Anonymous testing of individuals for AIDS shall be filed separately from client records and shall not be filed in anyway which identifies a specific client. If not conducted under anonymous procedures, when a client is tested by a facility for the HIV antibody, the written consent of the client and the test results may be incorporated into the client's record. Any other kind of substantiated information relative to AIDS may be placed in the appropriate client's record.
- (e) All medication regimes prescribed by a facility physician shall be reviewed for appropriateness by a physician at least every six months; except methadone, which shall be reviewed with the client every three months.

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

.0320 INCIDENT REPORTING

Each facility governing body shall ~~have~~ develop and implement a written policy for reporting all incidents, unusual occurrences or medication errors regarding clients. The policy shall provide for the following:

- (1) prompt reporting of the incident to appropriate persons within the facility and prompt emergency care when indicated;
- (2) documentation of the essential facts surrounding the incident with such documentation maintained in administrative files;
- (3) periodic review of incident reports by staff members to determine the cause of such incidents and to recommend preventive measures and corrective actions; and
- (4) evidence of corrective action taken, as appropriate, to implement recommendations.

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

.0334 SUBJECT PARTICIPATION IN RESEARCH PROJECTS

(a) Informed, written consent shall be obtained from each subject client in a research project, or from the legally responsible person, if a subject the client is incapable of providing informed written consent as follows: a minor or incompetent adult, to include the following:

- (1) subjects shall be informed of any potential dangers or risks that may exist as a result of participation;
- (2) subjects shall be informed as to what their participation will entail as related to time and effort, future follow-up, contacts with other people about them, and alterations of regular procedures;
- (1) (3) documentation shall be made that the participants have that the client has been informed of any potential dangers that may exist and that they understand he understands the conditions of participation; and
- (2) (4) each individual participating in a research project shall have the notice of the client's right to terminate participation at any time without prejudicing the treatment he is receiving. or his employment in the agency; and

(b) (5) A copy of the dated, signed consent form shall be kept on file in the client record by the facility. staff.

Statutory Authority G.S. 122C-26; 122C-52; 143B-147.

.0337 EMERGENCY CARE PERMISSION

~~Upon the client's admission,~~ Each facility shall secure a signed statement from the client or legally responsible person granting permission to seek emergency care from a hospital or physician.

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

.0348 DOCUMENTATION OF LABORATORY TESTS

(a) Each facility shall document in the client record the following information regarding each laboratory test administered:

- (1) name and date of any laboratory test ordered;
- (2) name of physician ordering test; and
- (3) date and time specimen obtained.

(b) ~~The original~~ copy of the report of laboratory test results shall be included in the client record.

(c) This Rule shall not apply to testing done anonymously for HIV infection.

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

**.0349 PRESCRIBING OF MEDICATION
(REPEALED)**

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

.0351 ADMINISTRATION OF MEDICATION

(a) Prescription medication shall be administered only on the written or verbal order of an authorized prescriber.

(b) Over-the-counter (non-prescription) medication shall be administered in inpatient facilities and to minors and incompetent adults in residential facilities only on the written approval of a physician or person authorized to prescribe legend drugs.

(c) Over-the-counter (non-prescription) medication shall be administered to minors or incompetent adults in all other facilities only on the written approval of the legally responsible person. Over-the-counter (non-prescription) medication shall be administered to a minor seeking treatment without parental consent only on the written approval of a physician.

(d) Only properly labeled and dispensed medication shall be administered.

(e) Medication shall be administered in inpatient facilities only by a physician, physician assistant or nurse. In other facilities, medication may be administered by, or self-administration supervised by, program staff who have received instruction about each medication, dosage, time of administration, side effects and contraindications from either the facility's physician, or his designee, or the legally responsible person. A list of persons approved to administer medication shall be maintained by the facility.

(f) A physician shall approve in writing the self-administration of prescription and over-the-counter (non-prescription) medication by clients in inpatient facilities or minors or incompetent adults in residential facilities. A minor or the legally responsible person of a minor or incompetent client shall obtain physician consent in writing for the self-administration of prescription or over-the-counter (non-prescription) medication in outpatient, day/night facilities. The competent adult client may self-administer prescription or over-the-counter (non-prescription) medication in outpatient, day/night or residential facilities. Where applicable, clients should receive training in the self-administration of medication.

(g) The administration of medication by staff shall be documented in the client record on a facility-maintained individualized medication administration record. The medication adminis-

tration record shall contain documentation of doses administered.

(h) Medication administration errors and adverse drug reactions shall be recorded in the client record and reported to the prescribing physician immediately.

Whenever a facility administers medication, documentation in the client record shall include the following:

- (1) Written medication orders signed by the prescriber.
- (2) Assessment by physician of client's drug therapy regimen for appropriateness, at least every six months.
- (3) Individualized record of medication administered by qualified program staff including record of doses administered.
- (4) Written approval of the legally responsible person of a minor or an incompetent adult is required before administering over-the-counter non-prescription medications.
- (5) For minors seeking treatment without parental consent, a physician or other person authorized to prescribe legend drugs must approve the use of over-the-counter (non-prescription) medications during the time when the minor is in the care of an area program service component.
- (6) Documentation of medication administration errors and adverse drug reactions, and immediate notification of prescribing physician.

Statutory Authority G.S. 90-21.5; 90-171.20 (7), (8); 90-177.44; 122C-26; 143B-147.

.0354 MEDICATION EDUCATION

(a) Each client to be started or maintained on prescription medication shall receive individual or group education regarding prescribed medication.

(b) The physician or his designee shall assess each client's ability to self-administer medication as well as other factors that may affect drug therapy. In instances where the ability of the client to understand the medication education is questionable, a responsible person shall be provided with the opportunity to receive both written and oral instructions on behalf of the client.

(c) The prescribing physician or other person approved by the physician shall provide the following ~~written and oral~~ information to the client or responsible person at a time deemed appropriate by the physician:

- (1) the name, ~~appearance and~~ dosage regimen, intended use and common side effects of the medication;

- (2) adverse reactions or uncomfortable side effects that should prompt calling a physician;
 - (3) food, drugs or beverages that should be avoided or taken with medication;
 - (4) an alternative dosage regimen if a dose is missed;
 - (5) the expected length of the medication treatment;
 - (6) refill instructions;
 - (7) the proper place to store medication; and
 - (8) the need to communicate and coordinate with other physicians of the client regarding prescription medications.
- (d) The medication education assessment and information provided shall be ~~individualized for each client and~~ documented in the client record.
- (e) ~~Medication education shall be coordinated with the discharging or receiving program.~~

Statutory Authority G.S. 122C-26; 130A-361; 143B-147.

SUBCHAPTER 14L - LICENSURE RULES FOR MENTAL HEALTH FACILITIES

SECTION .0300 - PARTIAL HOSPITALIZATION FOR INDIVIDUALS WHO ARE ACUTELY MENTALLY ILL

.0309 ROLE OF THE PARENT OR THE LEGALLY RESPONSIBLE PERSON (REPEALED)

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

SECTION .0400 - PSYCHOSOCIAL REHABILITATION FACILITIES FOR INDIVIDUALS WHO ARE CHRONICALLY MENTALLY ILL

.0407 EMPLOYMENT SERVICES

(a) Each facility shall provide or secure through the Division of Vocational Rehabilitation Services transitional or supported employment services to facilitate client entry into competitive employment. Full use shall be made of existing community resources to accomplish this including applying for funds available from Division of Vocational Rehabilitation Services.

(b) When supported employment services are provided by the facility, the following requirements shall be met:

- (1) Each client shall be one for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of severe mental illness.
- (2) Each client shall be employed in an integrated work setting for twenty or more hours per week.

- (3) Supported employment may be provided through:
 - (A) work stations for a group of eight or fewer workers trained and supervised in an industry or business;
 - (B) job coaching and supervision of individuals in an industry or business;
 - (C) mobile crew service jobs by a group of eight or fewer workers in the community under the training and supervision of a crew leader; and
 - (D) small business enterprises operated with eight or fewer workers with training and supervision provided on site.
- (c) When transitional employment services are provided by the facility, the following requirements shall be met:
 - (1) There shall be a contract between the facility and employer for a specific job and the job shall first be performed by a facility staff member to determine the technical requirements of the job.
 - (2) The selection of a client to fill a placement is the responsibility of the facility and the individual client.
 - (3) ~~Each client participating in transitional employment shall be evaluated at the end of six months to determine the appropriateness of continuing to receive transitional employment services.~~
 - (d) Wages shall be paid in accordance with the Fair Labor Standards Act for all clients receiving supported employment and transitional employment services.

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

SECTION .0500 - GROUP HOMES FOR ADULT AND ELDERLY INDIVIDUALS WHO ARE MENTALLY ILL

.0506 PROGRAM ACTIVITIES

(a) Each client shall participate in the overall operation of the residence including participation in routine activities such as maintenance and meal preparation.

(b) Each facility shall establish a resident council that meets on a regularly scheduled basis to discuss the client's responsibilities and issues related to facility activities.

(c) Each client shall be involved in treatment, rehabilitation, vocational, educational, or employment activities outside the facility on a regular basis ~~as specified in the client's individual treatment plan.~~ in accordance with the needs of the client.

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

**.0507 LEVELS OF CLIENT SUPERVISION
(REPEALED)**

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

**SECTION .0600 - RESIDENTIAL TREATMENT
FOR CHILDREN AND ADOLESCENTS WHO
ARE MENTALLY ILL**

**.0607 TREATMENT PROGRAM (REPEALED)
.0608 EDUCATIONAL PROGRAMS
(REPEALED)**

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

**.0610 ROLE OF THE PARENT OR THE
LEGALLY RESPONSIBLE PERSON
(REPEALED)**

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

**SECTION .0700 - DAY TREATMENT FOR
CHILDREN AND ADOLESCENTS WHO ARE
EMOTIONALLY DISTURBED**

**.0710 ROLE OF THE PARENT OR THE
LEGALLY RESPONSIBLE PERSON
(REPEALED)**

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

**SUBCHAPTER 14M - LICENSURE RULES FOR
MENTAL RETARDATION/DEVELOPMENTAL
DISABILITIES FACILITIES**

**SECTION .0100 - SPECIALIZED COMMUNITY
RESIDENTIAL CENTERS FOR INDIVIDUALS
WITH MENTAL RETARDATION OR OTHER
DEVELOPMENTAL DISABILITIES**

.0110 DAILY TRAINING ACTIVITIES

(a) Daily training activities shall be scheduled to meet the developmental needs of each client.

(b) Activities shall take into consideration the length of time each client should be scheduled for needed rest periods, his need for individual attention, and special limitation of activities and diets.

(c) Both free play and organized recreational activities shall be provided as appropriate to individual needs.

(d) Field trips and community experiences shall be provided for individual clients.

(e) Daily routines common to non-handicapped clients shall be followed.

(f) Daily outdoor activities shall be planned in acceptable weather when appropriate to the health and physical needs of the client.

(g) When adults are served, vocational services shall be provided unless there is ~~documentation~~ of medical contraindication.

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

**.0113 PARTICIPATION OF THE FAMILY
OR LEGALLY RESPONSIBLE PERSON**

(a) Facility staff shall help the family or the legally responsible person in understanding mental retardation and other developmental disabilities, their child's development, and the extent of the child's handicap.

~~(b) Individual goal plans shall be developed jointly between the facility staff and the child's parent or the legally responsible person when feasible.~~

~~(b) (e)~~ Family members or the legally responsible person shall be provided with the opportunity to participate in training seminars.

~~(c) (d)~~ Family members or the legally responsible person shall be encouraged to maintain an ongoing relationship with their child through such means as visits to the facility and the child's visits with the parent or the legally responsible person outside the facility.

~~(e) Reports to the parent or the legally responsible person shall be submitted at least annually. Reports may be in writing or take the form of a conference and shall focus on the child's progress toward meeting individual goals.~~

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

**SECTION .0200 - GROUP HOMES FOR
INDIVIDUALS WITH MENTAL RETARDATION
OR OTHER DEVELOPMENTAL DISABILITIES
AND WITH BEHAVIOR DISORDERS**

.0206 DAY SERVICES

Day services outside the facility, such as educational and vocational training, shall be secured for each client ~~as specified in the individual goal plan.~~ in accordance with the needs of the client.

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

**.0208 BEHAVIORAL PROGRAMMING
(REPEALED)**

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

.0209 COMMUNITY RESOURCES

~~In accordance with each client's individual program plan.~~ Community resources shall be utilized for each client including recreational, medical, dental and religious resources.

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

**.0210 PARTICIPATION OF THE FAMILY
OR LEGALLY RESPONSIBLE PERSON
(REPEALED)**

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

**SECTION .0400 - GROUP HOMES FOR
CHILDREN WITH MENTAL RETARDATION
OR OTHER DEVELOPMENTAL DISABILITIES**

.0409 COMMUNITY RESOURCES

~~In accordance with each child's individual program plan,~~ Community resources shall be utilized for each child including educational, recreational, medical, dental and religious resources.

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

**.0410 PARTICIPATION OF THE FAMILY
OR LEGALLY RESPONSIBLE PERSON**

(a) Staff shall help the family in understanding mental retardation and other developmental disabilities, the child's development, and the extent of the child's handicap.

~~(b) Individual goal plans shall be developed jointly between the staff and the client's parent or the legally responsible person when feasible.~~

~~(b) (e)~~ Family members shall be provided the opportunity to participate in training seminars.

~~(c) (d)~~ Each family shall be encouraged to maintain an ongoing relationship with their child through such means as family visits to the facility, and the child's visits with the parent or the legally responsible person outside the facility.

~~(e) Reports to the parent or the legally responsible person shall be submitted in writing at least quarterly, when feasible, with the opportunity extended to the parent or the legally responsible person for participation in at least one conference annually.~~

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

**SECTION .0600 - ADULT DEVELOPMENTAL
ACTIVITY PROGRAMS FOR INDIVIDUALS
WITH SUBSTANTIAL MENTAL
RETARDATION: SEVERE PHYSICAL
DISABILITIES OR OTHER SUBSTANTIAL
DEVELOPMENTAL DISABILITIES**

.0613 ACCIDENT REPORTING (REPEALED)

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

**.0616 SUSPENSIONS AND DISMISSALS
(REPEALED)**

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

**SUBCHAPTER 14N - LICENSURE RULES FOR
SUBSTANCE ABUSE FACILITIES**

**SECTION .0800 - OUTPATIENT METHADONE
FOR INDIVIDUALS WHO ARE NARCOTIC
ABUSERS**

.0810 WITHDRAWAL FROM METHADONE

~~(a) The withdrawal from methadone shall be discussed with each client at the initiation of treatment and at three month intervals thereafter.~~

~~(b) Documentation of the discussion required in (a) of this Rule and the client's reaction to the discussion shall be recorded in the client's record.~~

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

**SUBCHAPTER 14O - LICENSURE RULES FOR
FACILITIES SERVING MORE THAN ONE
DISABILITY**

**SECTION .0100 - ALTERNATIVE FAMILY
LIVING**

.0105 CLIENT SUPERVISION

At least one facility staff member shall be present in the facility during hours in which a client is in the facility unless the qualified professional who has designated responsibility for the client's treatment program or case management plan has ~~documented in the individual client plan that~~ authorized the client ~~may to~~ remain in the facility without supervision. ~~in certain clearly delineated instances.~~

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

.0106 SERVICE RESPONSIBILITIES

(a) When the governing body is not the provider of services, it shall attempt to match the client's needs with the provider.

(b) Each governing body shall maintain an application on each provider which includes the following:

- (1) full name of each person living in the facility;
- (2) place, telephone number and hours of employment for those family members who will be providing alternative family living services;
- (3) address, directions to and telephone number of residence; and
- (4) descriptions of sleeping arrangements for the client.

(c) Each governing body shall have a written agreement with each provider which includes but is not limited to the following:

- (1) ~~description of the client's behavior;~~ the responsibility of the provider;

- (2) ~~the responsibilities of the provider; confidentiality requirements; and~~
- (3) ~~confidentiality requirements; responsibility and procedures for securing emergency services.~~
- (4) ~~responsibility and procedures for securing emergency services;~~
- (5) ~~responsibilities for supervising the client;~~
- (6) ~~special dietary considerations;~~
- (7) ~~participation in appropriate training programs;~~
- (8) ~~responsibilities of both parties as to provision of client medical, dental, developmental or treatment services as deemed necessary;~~
- (9) ~~responsibilities for insuring that the client participates in appropriate treatment/habilitation services;~~
- (10) ~~responsibilities for client transportation;~~
- (11) ~~termination clause; and~~
- (12) ~~terms of compensation.~~

(d) Information regarding the client's specific needs or conditions shall be given to the provider prior to admission.

(e) ~~(d)~~ The governing body shall maintain a signed copy of the agreement in the files, and a signed copy shall be given to the provider.

(f) ~~(e)~~ Each governing body shall furnish each provider with a form for recording illness, accident or medical concerns, including administration of medication. This form shall be maintained by the governing body in the client's record.

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

.0108 HOUSEKEEPING ACTIVITIES

(REPEALED)

.0109 TRANSPORTATION (REPEALED)

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

SECTION .0200 - SUPERVISED INDEPENDENT LIVING

.0207 TREATMENT/HABILITATION PLAN (REPEALED)

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

SECTION .0300 - RESIDENTIAL THERAPEUTIC (HABILITATIVE) CAMPS FOR CHILDREN AND ADOLESCENTS

.0310 PROVISION OF APPROPRIATE ACTIVITIES

Each facility shall provide activities appropriate to the functioning level of the child or adolescent. Training in language and communication skills,

fine and gross motor skills, cognitive skills, social relationship skills and recreation skills shall be provided as specified in the individual client plan in accordance with the needs of the client.

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

SECTION .0400 - THERAPEUTIC HOMES FOR CHILDREN AND ADOLESCENTS

.0407 TRAINING OF THERAPEUTIC HOME PARENTS

The individual identified as the therapeutic home parent shall receive pre-service training in treatment services for the client for whom they are providing care. This training shall be documented in the personnel files. ~~of the area program or contract agency.~~ Training shall include, but not be limited to, the following:

- (1) child and adolescent development;
- (2) dynamics of emotionally disturbed and substance abusing youth and families;
- (3) symptoms of substance abuse;
- (4) needs of emotionally disturbed and substance abusing youth in residential settings;
- (5) administration of medication;
- (6) confidentiality;
- (7) client rights; and
- (8) development of the individual treatment plan.

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

.0408 AGREEMENT WITH THERAPEUTIC HOME PARENTS

(a) ~~When the governing body is not the provider of services, the governing body and the involved providers shall have~~ There shall be a written agreement with the therapeutic home parent, which includes, but is not limited to, the following:

- (1) ~~responsibility of the governing body and the therapeutic home parents; the responsibility of the provider;~~
- (2) ~~confidentiality requirements; and~~
- (3) ~~responsibility and procedures for securing emergency services.~~
- (4) ~~terms of compensation; and~~
- (5) ~~availability of the therapeutic home parents, including provision of vacation time and period of respite relief for the therapeutic home parents.~~

(b) Information regarding the client's specific needs or conditions shall be given to the provider prior to admission.

(c) ~~(b)~~ A signed copy of the agreement shall be maintained in the files of the area program or contract agency and a copy given to the therapeutic home parents.

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

.0409 COORDINATION OF TREATMENT AND EDUCATION

(a) ~~The area program or contract agency staff and therapeutic home parents client's educational program shall coordinate the client's individual be coordinated with his treatment/habilitation plan. with his educational program.~~

(b) ~~The area program or contract agency staff Treatment providers and therapeutic home parents shall have conferences, at least quarterly, consult with teachers or principals regarding the client, as well as with juvenile court personnel and other relevant caretakers. The client's parent or the legally responsible person shall be included as indicated by statute and area program or contract agency staff.~~

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

.0410 ROLE OF PARENT(S) OR THE LEGALLY RESPONSIBLE PERSON (REPEALED)

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

SECTION .0600 - SHELTERED WORKSHOPS

.0610 CLIENT RE-EVALUATION (REPEALED)

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

.0616 ACCIDENT REPORTING (REPEALED)

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

.0619 SUSPENSIONS AND DISMISSALS (REPEALED)

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

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18I - GENERAL REQUIREMENTS

SECTION .0100 - PURPOSE: SCOPE: APPLICABILITY AND DEFINITIONS

.0120 DEFINITIONS

(a) For the rules contained in Subchapter 18I through 18Q of this Chapter the following definitions apply:

(4) ~~"Active Client - Mental Health Treatment" means treatment provided for a client who:~~

(A) has a written plan of treatment, with specific goals and time frames;

(B) is receiving treatment in accordance with the plan; and

(C) has met face to face with a staff member within the past 90 days.

(2) ~~"Active Client - Substance Abuse Treatment" means treatment provided for a client who:~~

(A) has a written plan of treatment, with specific goals and time frames;

(B) is receiving treatment in accordance with the plan; and

(C) has met face to face with a staff member within the past 90 days.

(3) ~~"Active Client - Mental Retardation Habilitation" means developmental programming for an individual who is mentally retarded which is provided under the auspices of the area program or its contract agencies and initiated with the development of an individual program plan and ceasing when the client enters follow along status.~~

(1) (4) ~~"Administering Medication" means the term as defined in 10 NCAC 14K .0103.~~

(2) (5) ~~"Affective Education" means teaching the individual to work with his own and others' feelings and emotions for the primary purpose of understanding or modifying behavior and improving skills for making healthy, responsible decisions and for communicating effectively.~~

(3) (6) ~~"Alcohol Abuse" means the terms as defined in 10 NCAC 14K .0103.~~

(4) (7) ~~"Alcohol Dependence" (alcoholism) means the term as defined in 10 NCAC 14K .0103.~~

(5) (8) ~~"APSM 35-1" means "Standard for Area Programs and Their Contract Agencies" as codified in 10 NCAC 18I through 18Q and published by the Division.~~

(6) (9) ~~"Area Director" means an employee of the area board who is appointed by the area board with the approval of the Division director according to the procedures delineated in division publication APSR 105-1. The area director is responsible for the appointment of staff, for implementation of the policies and programs of the Board, compliance with the standards of the Commission, and for the supervision of all staff and service programs under the auspices of the area board.~~

(7) (10) ~~"Area Program" means the term as defined in 10 NCAC 14K .0103. For purposes of these Rules, the term "area~~

- program" means the same as "area authority" as defined in G.S. 122C-3.
- (8) ~~(11)~~ "Assessment" means the term as defined in 10 NCAC 14K .0103.
- (9) ~~(12)~~ "Atypical development" means the term as defined in 10 NCAC 14K .0103.
- (10) ~~(13)~~ "Behavior Modification" means the quantifiable application of one or more contingencies in a deliberate attempt to increase or decrease the frequency of a specified action or behavior of an individual.
- (11) ~~(14)~~ "Catchment Area" means a geographic portion of the state served by a specific area mental health, mental retardation and substance abuse authority as specified in 10 NCAC 18W .0001 - .0003 (division publication APSR 105-2).
- (12) ~~(15)~~ "Certified alcoholism counselor" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board.
- (13) ~~(16)~~ "Certified Drug Abuse Counselor" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board.
- (14) ~~(17)~~ "Certified Substance Abuse Counselor" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board.
- (15) ~~(18)~~ "Child" means the term as defined in 10 NCAC 14K .0103.
- (16) ~~(19)~~ "Chronically Mentally Ill Adult" means the term as defined in 10 NCAC 14K .0103.
- (17) ~~(20)~~ "Client Care Evaluation Study" means evaluation of the quality of services by measuring actual services against specific criteria through collection of data, identification and justification of variations from criteria, analysis of unjustified variations, corrective action, and follow-up study.
- (18) ~~(21)~~ "Clinical Staff Member" means the term as defined in 10 NCAC 14K .0103.
- (19) ~~(22)~~ "Component" or "Program Component" means a service developed to meet a particular need. The program component is provided either through operation by the area program or through contract with a public or private agency.
- (20) ~~(23)~~ "Contract Agency" means the term as defined in 10 NCAC 14K .0103.
- (21) ~~(24)~~ "Criminal Justice System" means a network which includes such elements as law enforcement, attorneys, the judiciary, adult corrections programs, (including prisons, probation and parole) and youth corrections programs.
- (22) ~~(25)~~ "Day/night Service" means ~~a service provided on a regular basis in a structured environment for a specified portion of a 24 hour period for the purposes of socialization, reintegration into the community, work readiness, rehabilitation, recreation, or as an alternative to hospitalization.~~ the term as defined in 10 NCAC 14K .0103.
- (23) ~~(26)~~ "Detoxification" means the term as defined in 10 NCAC 14K .0103.
- (24) ~~(27)~~ "Developmentally delayed children" means the term as defined in 10 NCAC 14K .0103.
- (25) ~~(28)~~ "Direct Care Staff" means the term as defined in 10 NCAC 14K .0103.
- (26) ~~(29)~~ "Disability Group" means either the mentally retarded, mentally ill, or substance abusers.
- (27) ~~(30)~~ "Disaster Relief Planning" means arranging for the provision of crisis counseling to survivors of major natural or man made catastrophes in accordance with the provisions of P.L. 93-288.
- (28) ~~(31)~~ "Dispensing Medication" means the term as defined in 10 NCAC 14K .0103.
- (29) ~~(32)~~ "Division" means the same as the term "DMH/MR/SAS" as defined in 10 NCAC 14K .0103.
- (30) ~~(33)~~ "Documentation" means the term as defined in 10 NCAC 14K .0103.
- (31) ~~(34)~~ "Drug Abuse" means the term as defined in 10 NCAC 14K .0103.
- (32) ~~(35)~~ "Drug Dependence" (addiction) means the term as defined in 10 NCAC 14K .0103.
- (33) ~~(36)~~ "Early Intervention Services" means the term as defined in 10 NCAC 14K .0103.
- (34) ~~(37)~~ "Emergency Service" means an assessment service which is provided on a 24-hour non-scheduled basis to individuals for immediate screening/assessment of presenting problems. Crisis intervention or referral to other services are provided as indicated. These services may be provided either in a hospital or non-hospital setting.
- (35) ~~(38)~~ "First Aid" means the term as defined in 10 NCAC 14K .0103.
- (36) ~~(39)~~ "Follow Along" (for mental retardation clients) means provision by the agency for a continuing relationship with the client for the purpose of assuring that the client's changing needs are recognized and appropriately met.

- (37) ~~(40)~~ "Foster Parent" means an individual who provides substitute care for a planned period for a child when his own family or legal guardian cannot care for him; and who is licensed by the N.C. Department of Human Resources and supervised by the County Department of Social Services or by a private program licensed or approved to engage in child care or child placing activities.
- (38) ~~(41)~~ "Governing Body" means the term as defined in 10 NCAC 14K .0103.
- (39) ~~(42)~~ "He/His/Him" means pronouns used throughout these standards for convenience and consistency for reference to both sexes.
- (40) ~~(43)~~ "Health Services" means the term as defined in 10 NCAC 14K .0103.
- (41) ~~(44)~~ "High risk children" means the term as defined in 10 NCAC 14K .0103.
- (42) ~~(45)~~ "Hours of Operation" means the term as defined in 10 NCAC 14K .0103.
- (46) ~~"Individual Goal Plan" (for clients with mental retardation or otherwise developmentally disabled) means the term as defined in 10 NCAC 14K .0103.~~
- (47) ~~"Individual Program Plan" (for clients with mental retardation or otherwise developmentally disabled) means the term as defined in 10 NCAC 14K .0103.~~
- (43) ~~(48)~~ "Individualized Education Program" means a written statement for a child with special needs that is developed and implemented pursuant to 16 NCAC 2E .1500 (Rules Governing Programs and Services for Children with Special Needs) available from the Department of Public Instruction.
- (49) ~~"Individual Treatment Plan" (for mental health/substance abuse clients) means the term as defined in 10 NCAC 14K .0103.~~
- (44) ~~(50)~~ "Infant" means the term as defined in 10 NCAC 14K .0103.
- (45) ~~(51)~~ "Inpatient service" means a service provided in a hospital setting on a 24-hour basis under the direction of a physician. The service provides continuous, close supervision for individuals with moderate to severe mental or substance abuse problems.
- (46) ~~(52)~~ "Justice Treatment Services" means consultation, treatment or educational services offered by the area program to components of the criminal justice system for individuals who have been indicted, prosecuted or incarcerated.
- (47) ~~(53)~~ "Legend Drug" means the term as defined in 10 NCAC 14K .0103.
- (48) ~~(54)~~ "Medication" means the term as defined in 10 NCAC 14K .0103.
- (49) ~~(55)~~ "Minor Client" means the term as defined in 10 NCAC 14K .0103.
- (50) ~~(56)~~ "Normalization Principle" means the principle of helping individuals to obtain an existence as close to normal as possible by making available to them patterns and conditions of every day life that are as close as possible to the norms and patterns of the mainstream of society.
- (51) ~~(57)~~ "Nurse" means the term as defined in 10 NCAC 14K .0103.
- (52) ~~"Outpatient or outpatient service" means the term as defined in 10 NCAC 14K .0103.~~
- (53) ~~(58)~~ "Parent" means the term as defined in 10 NCAC 14K .0103.
- (54) ~~(59)~~ "Peer Review" means the formal assessment by professional staff of the quality and efficiency of services ordered or performed by other professional staff.
- (55) ~~(60)~~ "Periodic Service" means a service provided through short recurring visits for individuals who are mentally ill, mentally retarded or substance abusers who can function in their normal environment. the term as defined in 10 NCAC 14K .0103.
- (56) ~~(61)~~ "Preschool age child" means the term as defined in 10 NCAC 14K .0103.
- (57) ~~(62)~~ "Prevention/intervention Service" means a service provided to the general public or major segments of a community. Service activities include counseling, information, instruction, and technical assistance with the goals of preventing dysfunction and promoting well being.
- (58) ~~(63)~~ "Privileging" means a process by which each staff member's credentials, training and experience are examined and a determination made as to which treatment/habilitation modalities he is qualified to provide.
- (59) ~~(64)~~ "Program Evaluation" means the term as defined in 10 NCAC 14K .0103.
- (60) ~~(65)~~ "Psychiatric Nurse" means the term as defined in 10 NCAC 14K .0103.
- (61) ~~(66)~~ "Psychiatric Social Worker" means the term as defined in 10 NCAC 14K .0103.
- (62) ~~(67)~~ "Psychiatrist" means the term as defined in 10 NCAC 14K .0103.
- (63) ~~(68)~~ "Psychotherapy" means the term as defined in 10 NCAC 14K .0103.
- (64) ~~(69)~~ "Psychotropic Medication" means the term as defined in 10 NCAC 14K .0103.

- (65) ~~(70)~~ "Qualified Alcoholism Professional" means the term as defined in 10 NCAC 14K .0103.
- (66) ~~(71)~~ "Qualified Client Record Manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Medical Record Association and who is currently registered or accredited by the American Medical Record Association.
- (67) ~~(72)~~ "Qualified Drug Abuse Professional" means the term as defined in 10 NCAC 14K .0103.
- (68) ~~(73)~~ "Qualified Mental Health Professional" means the term as defined in 10 NCAC 14K .0103.
- (69) ~~(74)~~ "Qualified Mental Retardation Professional" means the same as the term "Qualified developmental disabilities professional" as defined in 10 NCAC 14K .0103.
- (70) ~~(75)~~ "Qualified Nutritionist" means the term as defined in 10 NCAC 14K .0103.
- (71) ~~(76)~~ "Qualified Substance Abuse Professional" means the term as defined in 10 NCAC 14K .0103.
- (72) ~~(77)~~ "Registered Dietitian" means the term as defined in 10 NCAC 14K .0103.
- (73) ~~(78)~~ "Rehabilitation" means the term as defined in 10 NCAC 14K .0103.
- (74) ~~(79)~~ "Research" means the term as defined in 10 NCAC 14K .0103.
- (75) ~~(80)~~ "Research Review Board" means a group comprised of at least five members which has the authority to approve, require modification, or disapprove proposed research projects of the area program or its contract agencies. Individuals not directly associated with research projects under consideration comprise a majority of the review board. The review board may be established by the program conducting research activities or by another public or private agency, institution or organization.
- (76) ~~(81)~~ "Residential Service" means a service provided in a 24-hour living environment in a non-hospital setting where room, board, and supervision are an integral part of the care, treatment, habilitation or rehabilitation provided the individual.
- (77) ~~(82)~~ "Respite episode" means the term as defined in 10 NCAC 14K .0103.
- (78) ~~(83)~~ "Screening" means the term as defined in 10 NCAC 14K .0103.
- (79) "Service" means the term as defined in 10 NCAC 14K .0103.
- (80) ~~(84)~~ "Severely Physically Disabled Person" means for the purpose of ADAP (Adult Developmental Activity Program) the term as defined in 10 NCAC 14K .0103.
- (81) ~~(85)~~ "Standard Client Record" means a written account of all services provided a client from the time of formal ~~acceptance~~ admission of the client by the area program or contract agency until ~~termination of services~~ discharge. This information is documented on standard forms which are filed in a standard order.
- (82) ~~(86)~~ "Standards" means specifications of the required basic levels of activity and required basic levels of human and technical resources necessary for the implementation and operation of mental health, mental retardation and substance abuse programs. Standards are officially titled "Standards for Area Programs and Their Contract Agencies", are codified in 10 NCAC 18I through 18Q and are published by the Division as APSM 35-1.
- (83) ~~(87)~~ "State Facility" means a facility operated by the Division and which provides mental health, mental retardation or substance abuse services.
- (84) ~~(88)~~ "Student" means an individual who is participating in a prescribed course of instruction, for example, an individual who is enrolled in an alcohol and drug education traffic school or a drug education school.
- (85) ~~(89)~~ "Substantially Mentally Retarded Person" means the term as defined in 10 NCAC 14K .0103.
- (86) ~~(90)~~ "Support Services" means the term as defined in 10 NCAC 14K .0103.
- (87) ~~(91)~~ "Telephone Counseling Service" means an organized and publicized service providing short-term supportive counseling, referral, crisis intervention and information.
- (88) ~~(92)~~ "Testing Services" means the administration and interpretation of the results of standardized instruments for the assessment, diagnosis or evaluation of psychological or developmental disorders.
- (89) ~~(93)~~ "Toddler" means the term as defined in 10 NCAC 14K .0103.
- (90) "Treatment habilitation plan" means the term as defined in 10 NCAC 14K .0103.
- (91) "Twenty-four hour service" means the term as defined in 10 NCAC 14K .0103.
- (92) ~~(94)~~ "Utilization Review" means examination of the appropriateness of admission, services ordered and provided, length

of treatment and discharge practice usually on a concurrent basis. Utilization review focuses upon the individual client.

(93) ~~(95)~~ "Vocational Rehabilitation Services" means services available to eligible mentally and physically disabled citizens who, with reasonable accommodations, can perform the essential function of the job in question as defined in the Rehabilitation Act of 1973 (P.L. 93-112 as amended).

(b) In addition to the definitions contained in this rule, the terms defined in G.S. 122C-3 also apply to all the rules in this Subchapter and Subchapters 18J through 18Q of this Chapter.

Statutory Authority G.S. 122C-3; 143B-147.

SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS

SECTION .0500 - CLIENT RECORDS

.0505 CLIENT RECORD RESPONSIBILITY (REPEALED)

.0506 STANDARD MH RECORD FOR AREA OPERATED COMPONENTS (REPEALED)

.0507 STANDARD SA RECORD FOR AREA OPERATED COMPONENTS (REPEALED)

.0508 STANDARD MR RECORD FOR AREA OPERATED COMPONENTS (REPEALED)

.0509 STANDARD MH/MR/SA RECORDS FOR CONTRACT AGENCIES (REPEALED)

.0510 CONTENT FOR CLIENT RECORDS (REPEALED)

Statutory Authority G.S. 122C-51; 122C-57; 122C-61; 122C-206; 143B-147.

.0512 INDICES AND REGISTERS (REPEALED)

Statutory Authority G.S. 143B-147.

SECTION .0600 - CLIENT ELIGIBILITY

.0603 SERVICE PURPOSE AND ELIGIBILITY REQUIREMENTS

The governing body of ~~each component~~ shall develop written policies addressing ~~its~~ the purpose and eligibility for service requirements. ~~including admission, treatment, habilitation and discharge criteria.~~

Statutory Authority G.S. 143B-147.

SECTION .0700 - TREATMENT/HABILITATION PROCESS

.0701 SCOPE

The standards in this Section apply to each ~~component service~~ of the area program and its contract agencies. ~~unless otherwise specified in the "Service Records Manual for Area Operated and Contract Agency Components" (division publication APSM 45-2). These referenced rules have been adopted in accordance with G.S. 150B-14(c).~~

Statutory Authority G.S. 143B-147.

.0702 CROSS-REFERENCE TO ADMISSION AND DISCHARGE

(a) Each ~~component service~~ not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0313.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0313 shall be interpreted to mean "component", "service".

Statutory Authority G.S. 143B-147.

.0706 CROSS-REFERENCE TO DISCHARGE /AFTERCARE (REPEALED)

Statutory Authority G.S. 143B-147.

SECTION .0800 - HEALTH PRACTICES

.0802 PHYSICIAN ASSESSMENT (REPEALED)

Statutory Authority G.S. 122C-51; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0806 CROSS-REFERENCE TO EMERGENCY CARE PERMISSION

(a) ~~Upon the client's admission,~~ Each ~~component facility~~ not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0337.

(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0337 shall be interpreted to mean "component", "service".

Statutory Authority G.S. 143B-147.

SECTION .1100 - MEDICATION SERVICES

.1102 CROSS-REFERENCE TO PRESCRIBING OF MEDICATION

(a) Individuals prescribing or administering medication in programs not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of ~~10 NCAC 14K .0349.~~ 10 NCAC 14K .0351.

(b) For purposes of the rules of this Section, the term "facilities" in ~~10 NCAC 14K .0349~~ 10

NCAC 14K .0351 shall be interpreted to mean "services", "service".

Statutory Authority G.S. 143B-147.

**.1104 CROSS-REFERENCE TO
ADMINISTRATION OF MEDICATION
(REPEALED)**

Statutory Authority G.S. 90-21.5; 90-171.20 (7), (8); 90-177.44; 143B-147.

**SECTION .1500 - EARLY INTERVENTION
SERVICES PROCEDURE SAFEGUARDS**

.1502 DEFINITIONS

(a) As used in this Section, the following terms shall have the meanings specified in Section 303.401 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations:

- (1) "Consent";
- (2) "Native language";
- (3) "Personally identifiable".

This adoption by reference is in accordance with G.S. 150B-14(c).

(b) As used in this Section, the term "Early Intervention Services" shall have the meaning specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations. This adoption by reference is in accordance with G.S. 150B-14(c).

(c) As used in this Section, an eligible child is an infant or toddler ~~with or at risk for developmental disabilities, delays, or atypical development who meets the definition of "high risk children,"~~ as defined in 10 NCAC 14K .0103. This adoption by reference is in accordance with G.S. 150B-14(c).

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

.1507 EARLY INTERVENTION SERVICES

(a) Area programs and contract agencies shall comply with Section 303.12 (b) through (e) of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations relating to early intervention services. This adoption by reference is in accordance with G.S. 150B-14(c).

(b) Infants and toddlers referred for services shall be assessed in accordance with the provisions of 10 NCAC 14K .0314 and admitted in accordance with the provisions of 10 NCAC 14K .0313.

(c) Infants and toddlers shall receive services in accordance with the provisions of 10 NCAC 14K .0315.

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

SUBCHAPTER 18M - REQUIRED SERVICES

**SECTION .0300 - CONSULTATION AND
EDUCATION SERVICES FOR INDIVIDUALS
OF ALL DISABILITY GROUPS**

**.0308 MAINTENANCE AND RETENTION OF
RECORDS**

Statutory Authority G.S. 143B-147.

**SECTION .0700 - DEVELOPMENTAL DAY
SERVICES FOR PRESCHOOL CHILDREN
WITH DEVELOPMENTAL DISABILITIES OR
DELAYS OR AT HIGH RISK FOR MENTAL
RETARDATION, DEVELOPMENTAL
DISABILITIES OR DELAYS**

.0704 STAFF REQUIREMENTS

(a) Staff shall provide continuous supervision of each child.

(b) A minimum of two staff members shall provide direct child care at all times.

(c) A minimum of one direct child care staff member shall be on duty for each five children.

(d) A minimum of one certified teacher who holds certification in special education, early childhood education or elementary education shall be employed for each 20 children or less. When infants and toddlers are served, the professional responsible for fulfilling this requirement shall be privileged according to the ~~procedures outlined in the Division's REGULATIONS FOR PRIVILEGING PROFESSIONALS WORKING WITH INFANTS AND TODDLERS WITH OR AT RISK FOR DEVELOPMENTAL DELAYS OR ATYPICAL DEVELOPMENT, APSM 120-1 (4/1/89).~~ This manual is adopted by reference in accordance with G.S. 150B-14(c). in accordance with a written agreement between the Division and the area program.

(e) If infants are served, a minimum of one direct care staff member shall be on duty for each three infants.

(f) ~~Assessment of the child to determine developmental delay, developmental disability, atypical development or high risk for these conditions shall be performed by a professional privileged according to procedures outlined in the Division's REGULATION FOR PRIVILEGING PROFESSIONALS WORKING WITH INFANTS AND TODDLERS WITH OR AT RISK FOR DEVELOPMENTAL DELAYS OR ATYPICAL DEVELOPMENT, APSM 120-1 (4-1-89) whose training includes assessing children in the developmental area of concern.~~

Statutory Authority G.S. 143B-147.

**.0707 INDIVIDUAL PROGRAM PLANS AND
GOAL PLANS (REPEALED)**

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

.0710 FAMILY SERVICES

~~(a) Individual goal plans shall be shared with parents so that the family may continue training activities.~~

~~(a) (b)~~ Parents shall be provided the opportunity to observe their child in the program.

~~(b) (e)~~ The center shall provide or secure opportunities for parents to attend parent training seminars.

~~(d) Reports to parents shall be submitted at least every three months. Reports may be in writing or take the form of a conference, and shall focus on the child's progress.~~

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

**SECTION .0800 - ADULT DEVELOPMENTAL
ACTIVITY PROGRAMS (ADAP) FOR
INDIVIDUALS WITH SUBSTANTIAL MENTAL
RETARDATION, SEVERE PHYSICAL
DISABILITIES OR OTHER SUBSTANTIAL
DEVELOPMENTAL DISABILITIES**

**.0818 ADMISSION CRITERIA AND
PROCEDURES**

(a) Each ADAP shall have an admissions committee.

(b) A pre-admission staffing shall be held for each client considered for admission to the ADAP. During the staffing, the committee shall consider information available regarding the client's medical, psychological and social histories.

(c) Results of the pre-admission staffing shall be ~~documented and forwarded~~ provided to the referral agency. A representative of the ADAP admissions committee shall notify the client.

(d) Each ADAP shall have written admission policies and procedures. These policies and procedures shall include at least the following:

(1) Each client shall be referred to the Division of Vocational Rehabilitation Services. ~~with written documentation of this referral.~~

(2) A qualified mental retardation professional of the area program shall obtain a ~~written~~ recommendation from the vocational rehabilitation counselor recommending consideration for a placement in the ADAP.

(3) A qualified developmental disabilities professional of the area program shall

certify the eligibility of each client for the ADAP service taking into consideration at least the provision of Paragraph (b) and Subparagraphs (d)(1) and (d)(2) of this Standard Rule.

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

**SECTION .1100 - INPATIENT HOSPITAL
DETOXIFICATION SERVICES FOR
INDIVIDUALS WHO ARE ALCOHOL OR
OTHER DRUG ABUSERS**

**.1105 AREA PROGRAM WRITTEN
AGREEMENTS**

When inpatient hospital detoxification services are provided by written agreement with a private or general hospital, the written agreement shall be developed between the area program and the service provider which shall specify at least the following:

- (1) criteria for service availability for area program patients;
- (2) responsibilities of both parties related to admission, treatment and discharge of patients;
- (3) parties responsible for the operation of the detoxification service;
- (4) responsibilities of each party regarding continuity of service for patients discharged from the detoxification service; and
- (5) provision for the exchange of information ~~including at least a transfer or discharge summary,~~ between the area program and the inpatient service.

Statutory Authority G.S. 143B-147.

**SECTION .1400 - EARLY CHILDHOOD
INTERVENTION SERVICES (ECIS) FOR
CHILDREN WITH MENTAL RETARDATION
OR AT HIGH RISK FOR MENTAL
RETARDATION OR OTHER
DEVELOPMENTAL DISABILITIES OR DELAYS**

.1403 INTERDISCIPLINARY ECIS STAFF

(a) At least one member of the ECIS staff shall be an individual who holds a degree in education or early childhood development.

(b) The disciplines of social work, physical therapy, occupational therapy and medicine shall be represented on the staff in response to the documented needs of the children and families served. These disciplines may be represented by staff members, consultant staff, or through agreements with staff of other agencies.

~~(c) Assessment of the child to determine developmental delay, developmental disability, atypical development or high risk for these conditions shall be performed by an appropriately privileged~~

professional privileged according to the procedures outlined in the Division's REGULATION FOR PRIVILEGING PROFESSIONALS WORKING WITH INFANTS AND TODDLERS WITH OR AT RISK FOR DEVELOPMENTAL DELAYS OR ATYPICAL DEVELOPMENT, APSM 120-1 (11-89) whose training includes assessing children in the developmental area of concern. Assessments shall be conducted in accordance with 10 NCAC 14K .0314.

Authority G.S. 143B-147; 20 U.S.C. 1471.

.1405 INDIVIDUAL TREATMENT/ HABILITATION PLAN

(a) Individual program plans, with individual quarterly goal plans, shall be developed with the parent for each child.

(b) Individual quarterly goal plans shall address the developmental areas of self help, physical, language and speech, cognitive, and psychosocial skills as indicated by needs identified in the child assessment process and parental priorities.

(c) Each review of the child's progress shall be conducted by the ECIS staff and the child's parents.

(d) Individual parent program plans with individual quarterly goal plans shall be developed with the parents or legally responsible person of the children served or in areas indicated by needs identified in the family assessment process. This process involves gathering information about family strengths and needs related to their ability to enhance their child's development.

(e) Standardized tests, rating scales, developmental profiles and other instruments and procedures that meet acceptable professional standards shall be used to document the nature and severity of the problem necessitating intervention.

An individual treatment habilitation plan shall be developed in the same format and content as that required by 10 NCAC 14K .0315.

Authority G.S. 122C-51; 143B-147; 20 U.S.C. 1471.

SUBCHAPTER 18N - OPTIONAL SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

SECTION .0200 - SPECIALIZED FOSTER CARE SERVICES

.0212 SUPPORT ACTIVITIES OF THE AREA PROGRAM

Support activities of the area program shall include the following:

- (1) assistance with funding, including billing preparation;
- (2) monitoring and evaluation of service activities identified within the placement care agreement;
- (3) consultation and technical assistance;
- (4) coordination of initial and ongoing training for specialized foster parents;
- (5) coordination of activities with the county department of social services or other licensed child care agency to assure that consistent and mutually agreeable requirements are placed on the foster parents;
- (6) facilitation of specialized support services for the foster family and child including day services, respite care, and continuing diagnostic and evaluation services; and
- (7) ~~leadership in the development and implementation of the individual treatment/quarterly goal plan and the completion of progress reviews; and~~
- (7) ~~(8)~~ assistance to the county department of social services or other licensed child care agency in the event of change of foster placement.

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

SECTION .0300 - PREVENTION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.0307 DATA COLLECTION, MAINTENANCE AND RETENTION (REPEALED)

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18O - OPTIONAL SERVICES FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

SECTION .0500 - TREATMENT ALTERNATIVES TO STREET CRIMES (TASC) FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0520 SCREENING AND IDENTIFICATION

Each TASC program shall provide to the criminal justice system ~~documented~~ screening and identification for prospective clients. ~~interviewed~~ which shall include the following:

- (1) ~~substance abuse history;~~
- (2) ~~criminal history;~~
- (3) ~~demographic information; and~~
- (4) ~~current employment and job status.~~

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

.0521 EVALUATION

Each TASC program shall conduct or secure a ~~substance abuse~~ an assessment or evaluation for

each prospective client referred from the criminal justice system. ~~which shall include the following:~~

- ~~(1) demographic information;~~
- ~~(2) social summary;~~
- ~~(3) current and past substance abuse patterns with references to specific substances;~~
- ~~(4) length of substance abuse; and~~
- ~~(5) frequency of substance abuse.~~

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

.0523 MONITORING/REPORTING

(a) Each TASC program shall develop and implement a monitoring and reporting procedure for each client.

(b) ~~The monitoring procedure shall include as a minimum the following:~~

- ~~(1) change in residence;~~
- ~~(2) change in legal status;~~
- ~~(3) changes in employment and education;~~
- ~~(4) attendance;~~
- ~~(5) program participation;~~
- ~~(6) urinalysis;~~
- ~~(7) treatment modality assignment; and~~
- ~~(8) progress or treatment goals.~~

(c) ~~Each TASC program shall provide regular reports regarding each client to the courts and approved individuals or agencies.~~

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

SUBCHAPTER 18P - OPTIONAL SERVICES FOR INDIVIDUALS WHO ARE MENTALLY ILL OR EMOTIONALLY DISTURBED

SECTION .0900 - CONTRACTED INPATIENT PSYCHIATRIC SERVICES FOR CHILDREN: ADOLESCENT: ADULT AND ELDERLY INDIVIDUALS WHO ARE MENTALLY ILL

.0903 AREA PROGRAM/HOSPITAL AGREEMENT

(a) A written agreement between the area program and the general hospital or private psychiatric hospital shall be developed and shall specify at least the following:

- (1) criteria for service availability for area program patients;
- (2) responsibilities of both parties related to admission, treatment, and discharge of patients;
- (3) parties responsible for the operation of the inpatient service;
- (4) responsibilities of each party regarding continuity of service for patients discharged from the inpatient service; and
- (5) provision for the exchange of information, including at least a discharge summary,

~~between the area program and the inpatient service.~~

(b) The written agreement shall be approved by the Division.

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

SUBCHAPTER 18Q - GROUP HOMES FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

SECTION .0500 - COMMUNITY RESPITE SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION, OTHER DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DELAYS OR AT RISK FOR THESE CONDITIONS

.0541 COMPANION SITTER: RESPONSIBILITIES OF GOVERNING BODY

(a) Each governing body shall attempt to match the client's needs with the provider's ability to provide respite care.

(b) Each governing body shall make available to the provider a written statement of duties and responsibilities:

- (1) This statement shall include length of service to be provided, medications to be administered and special dietary considerations.
- (2) If the client is involved in a developmental or occupational program, the provider shall be provided written information regarding his responsibilities for assuring that the client attends the program and for structuring activities to enhance objectives established by the developmental or occupational program.

(c) ~~Each governing body shall make available to the provider a form for recording illness, accident, medical concern, including administration of medication, and general health and appearance of each client at the initiation of each episode of respite care. Following each respite episode, the companion sitter facility shall forward the completed form to the governing body for inclusion in the client's record.~~

Statutory Authority G.S. 143B-147.

SECTION .0800 - APARTMENT LIVING PROGRAMS FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0808 CROSS-REFERENCE TO TREATMENT /HABILITATION PLAN

Each apartment living program not subject to licensure under G.S. 122C, Article 2 shall ~~comply with the requirements regarding the develop a~~

treatment habilitation plan ~~delineated~~ utilizing the same format and content as is required in 10 NCAC 14Q .0207, 14K .0315.

Statutory Authority G.S. 143B-147.

.0809 AGREEMENT BETWEEN RESIDENT AND PROGRAM

(a) A written agreement shall be negotiated between each resident and the apartment living program which specifies the responsibilities of the program and the resident.

~~(b) One copy shall be given to the resident and one copy included in the resident's record.~~

~~(b) (c)~~ The agreement shall be renegotiated as appropriate but at least annually.

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

* * * * *

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 14P .0101 - .0102; 14Q .0101 - .0104, .0201 - .0204, .0301 - .0306; 14R .0101 - .0107, .0201, .0301 - .0303; 14S .0101 - .0106; 18L .0433 - .0434; and repeal rule(s) cited as 10 NCAC 14K .0366 - .0367; 18Q .0713, .0812.

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

The public hearing will be conducted at 10:00 a.m. on August 14, 1991 at the Mission Valley Inn, 3110 Avent Ferry Rd., Raleigh, NC 27606, (919) 828-3173.

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 August 13, 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 .0300 - FACILITY AND PROGRAM MANAGEMENT

.0366 APPLICABLE CLIENTS' RIGHTS STATUTES (REPEALED)

.0367 USE OF INTERVENTION PROCEDURES (REPEALED)

Statutory Authority G.S. 122C-26; 122C-51; 122C-51 through 122C-62; 122C-53; 122C-60; 122C-65; 122C-66; 130A-143; 131E-67; 143B-147.

SUBCHAPTER 14P - PROCEDURES AND GENERAL INFORMATION

SECTION .0100 - SCOPE AND DEFINITIONS

.0101 SCOPE

These Rules, 10 NCAC 14P, 14Q, 14R and 14S, set forth procedures governing the protection of client rights in public and private facilities providing mental health, developmental disabilities and substance abuse services, with the exception of state-operated facilities. In addition to these Rules, the governing body shall comply with the provisions of G.S. 122C, Article 3, regarding client rights.

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

.0102 DEFINITIONS

(a) ~~In addition to~~ The definitions contained in this Rule, and the terms defined in G.S. 122C-3, G.S. 122C-4 and G.S. 122C-53(f) also apply to all rules in Subchapters 14P, 14Q, 14R and 14S.

(b) As used in these Rules, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of ~~physical or mental~~ physical ~~mental or physical~~ pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Basic necessities" means the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced ~~during~~ consisting of three meals per day, access to water and bathroom facilities at frequent intervals, seasonable

clothing, medications prescribed by a physician, time for sleeping and frequent access to social contacts.

- (3) "Consent" means concurrence by a client or legally responsible person following receipt of sufficient information ~~by from~~ the qualified professional who will administer the proposed treatment or procedure. ~~Informed~~ Consent implies that the client or legally responsible person was provided with sufficient information concerning proposed treatment, including both benefits and risks, in order to make ~~an~~ ~~educated~~ a decision with regard to such treatment.
- (4) ~~"Dangerous articles or substances" means, but is not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.~~
- (4) ~~(5)~~ "Director of Clinical Services" means medical director, Director of Medical Services, or other qualified professional designated by the governing body as the Director of Clinical Services. ~~or a designee.~~
- (5) ~~(6)~~ "Emergency" means a situation in which a client is in imminent danger of causing abuse or injury to self or others or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior and rapid intervention by the staff is needed.
- (6) ~~(7)~~ "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred, for the purpose of modifying behavior.
- (7) ~~(8)~~ "Exploitation" means the illegal or ~~improper unauthorized~~ use of a client or a client's resources for another person's profit, business or advantage. The term includes taking or using personal property from a client with or without the client's permission.
- (8) ~~(9)~~ "Governing body" means ~~those persons or a designee, any person~~ who by law, charter, articles of incorporation, partnership agreement, or other legally recognized manner have full legal authority for the overall operation of the facility.
- (9) ~~(10)~~ "Governor's Advocacy Council for Persons with Disabilities (GACPD)" means ~~a the council legislatively mandated by state government~~ to provide protection and advocacy systems and promote em-

ployment for all persons with disabilities in North Carolina.

- (10) ~~(11)~~ "Intervention Advisory Committee" means a group of three to five ~~concerned~~ citizens established by the governing body to provide an additional safeguard in ~~facilities a facility that utilize utilizes~~ intrusive treatment or habilitation interventions specified in ~~Subchapter 14R Rule .0106. Subchapter 14R .0106.~~
- (11) ~~(12)~~ "Intervention procedures" ~~refers to~~ means the following interventions: seclusion; physical restraint, excluding protective device; isolation time-out; exclusionary time-out for more than 15 minutes; time-out for more than one hour; contingent withdrawal or delay of access to personal possessions or goods to which the client is ordinarily entitled; consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and overcorrection to which the client ~~resists. is likely to resist.~~
- (12) ~~(13)~~ "Intrusive intervention" ~~refers to~~ means an intervention procedure which presents a significant risk of mental or physical harm to the client and, therefore, requires additional safeguards. Such an intervention may include the use of:
 - (A) seclusion; physical restraint, excluding protective device; or isolation time-out employed as a measure of therapeutic treatment; and
 - (B) seclusion; restraint, excluding protective device; or isolation time-out used on an emergency basis for more than 40 hours in a calendar month or for more than one episode of 24 hours.
- (13) "Involuntary client" means an individual who is admitted to a facility in accordance with G.S. 122C, Article 5, Parts 6 through 12.
- (14) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but not locked and where there is continuous supervision by staff, for the purpose of modifying behavior.
- (15) "Major physical injury" means damage caused to the body resulting in substantial bleeding or contusion of tissues, fracture of a bone, damage to internal organs, loss of consciousness, loss of normal neurological function (inability to move or coordinate movement) or any other painful condition caused by such injury.
- (15) ~~(16)~~ "Minor client" means a person under 18 years of age who has not been married

- or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (16) ~~(17)~~ "Neglect" means the failure to provide care or services necessary to maintain the mental ~~health~~ or physical health and well-being of the client.
- (17) ~~(18)~~ "Neuroleptic medication" means a the category of psychotropic drugs which is used to treat schizophrenia and related disorders. ~~Neuroleptics are the only category of psychotropic drugs with long term side effects of major consequence (e.g., tardive dyskinesia), which result in tardive dyskinesia.~~ Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.
- (18) ~~(19)~~ "Normalization" means the utilization of culturally valued ~~means~~ resources to establish or maintain personal behaviors, experiences and characteristics that are culturally normative or valued.
- (19) "Physical restraint" means the limitation of one's freedom of movement and includes the following:
- (A) mechanical intervention which means restraint of a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts;
- (B) physical intervention which means restraint of a client by physically holding or subduing the client until calm. As used in these Rules, the term physical intervention does not apply to the use of professionally recognized methods for therapeutic holds of brief duration (five minutes or less); and
- (C) protective device which means an intervention that provides support for medically fragile clients or enhances the safety of self-injurious clients. Such devices may include geri-chairs or table top chairs to provide support and safety for clients with major physical handicaps; devices such as seizure helmets or helmets and mittens for self-injurious behaviors; or soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices. Protective device is not mechanical intervention as defined in Subparagraph (19)(A) of this Rule.
- (20) "Privileged" means authorization by the governing body for a professional to provide specific treatment or habilitation services to clients, ~~within well-defined limits,~~ based on the professional's education, training, experience, competence and judgment.
- (21) ~~(21)~~ "Protective device" means an intervention which provides support for medically fragile clients or enhances the safety of self-injurious clients. Such devices may include geri chairs or table top chairs to provide support and safety for clients with major physical handicaps; devices such as seizure helmets or helmets and mittens for self-injurious behaviors; or soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices. Protective devices do not include mechanical restraints as defined in Subparagraph (21)(A) of this Rule.
- (21) ~~(22)~~ "Responsible professional" shall have the meaning specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in G.S. 122C-3(31).
- (22) ~~(23)~~ "Restraint" means the limitation of one's freedom of movement and includes the following:
- (A) mechanical restraint which means restraint of a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts.
- (B) physical restraint which means restraint of a client by physically holding or subduing the client until calm. As used in these Rules, the term physical restraint does not apply to the use of professionally recognized methods for therapeutic holds of brief duration (five minutes or less).
- (22) ~~(24)~~ "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior.
- (23) ~~(25)~~ "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (24) ~~(26)~~ "Time-out" means the removal of a client from positive reinforcement ~~and~~ or other clients, to another space within the same activity area for the purpose of modifying behavior.
- (25) ~~(27)~~ "Treatment" means the process of providing for the physical, emotional,

psychological and social needs of clients through services.

(26) ~~(28)~~ "Treatment or program plan" means an individual goal plan (for mentally retarded clients) or individual treatment plan (for mental health or substance abuse clients), as defined in 10 NCAC 14K .0315 of division publication APSM 40-2, 7/1/89 (LICENSURE RULES FOR MENTAL HEALTH, MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES) adopted pursuant to G.S. 150B-14(e).

(27) ~~(29)~~ "Treatment or habilitation team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of a client and which is responsible for the formulation, implementation and periodic review of the client's treatment or program plan.

(28) "Voluntary client" means an individual who is admitted to a facility upon his own application or that of the legally responsible person.

Statutory Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 122C-60; 131E-67; 143B-147.

SUBCHAPTER 14Q - GENERAL RIGHTS

SECTION .0100 - GENERAL POLICIES AND PROCEDURES

.0101 POLICY ON RIGHTS RESTRICTIONS AND INTERVENTIONS

(a) For each service provided in a facility where rights will not be restricted and interventions as specified in Section .0100 of Subchapter 14R of these Rules will not be employed, the governing body shall implement policies to ensure that such rights will not be restricted nor such interventions employed.

(b) For each service provided in a facility where rights may be restricted, or interventions as specified in Section .0100 of Subchapter 14R of these Rules may be employed, the governing body shall develop and implement policies which:

- (1) identify the rights specified in G.S. 122C-62(b) and (d) that may be restricted, as provided in G.S. 122C-62 (e) and (h), and interventions specified in Rule .0103, Rule .0104 and Rule .0106 of Subchapter

14R that may be employed in each of its services;

- (2) designate an individual responsible for informing the client;
- (3) specify procedures for the following:
 - (A) informing each client at the time of admission or entry into the service, or as soon as feasible, but no longer than within 72 hours thereafter, of rights, potential restrictions and use of interventions;
 - (B) assuring that a written summary of rights ~~are~~ is provided to the client, and when applicable, the legally responsible person; and that materials are explained in a manner or at a level consistent with the client's capacity for comprehension;
 - (C) ~~educating~~ informing the client and the legally responsible person regarding the purposes, goals and reinforcement structure of any behavior management system that is allowed by governing body policy to restrict client rights or utilize interventions as specified in Subparagraph (b)(1) of this Rule; and
 - (D) documentation in the client record that rights have been explained including mode of communication used.

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

.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 policy that assures 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.

.0103 SEARCH AND SEIZURE POLICY

(a) Clients shall be free from unwarranted invasion of privacy. The governing body shall ~~establish a policy~~ develop and implement policies regarding the need to search clients or private living areas.

(b) This policy shall specify whether searches of clients or private living areas are allowed or whether they are prohibited. If searches are allowed, the policy shall address the following:

- (1) scope of search;
- (2) reason for search;
- (3) search procedures; and
- (4) disposition of seized property.

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

.0104 ANNUAL INTERNAL AUDIT

Each governing body shall assure the conduct of an annual internal compliance audit in each of its facilities ~~of regarding~~ the implementation of client rights ~~as specified in G.S. 122C, Article 3 and these rules.~~ A written report of such findings shall be maintained by the governing body for a period of two years.

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 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.

.0203 INFORMING CLIENTS OF ADVOCACY SERVICES

~~Procedures shall be implemented~~ The governing body shall develop and implement policies to assure that:

- (1) every client is informed of his right to contact the Governor's Advocacy Council for Persons with Disabilities (GACPD), the statewide agency designated under federal and state law to protect and advocate the rights of persons with disabilities;
- (2) there is compliance with applicable provisions of the federal law governing advocacy services to the mentally ill, as specified in the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319) and amended by Public Law 100-509 (1988); and
- (3) there is compliance with applicable provisions of the federal laws governing advocacy services to the developmentally

disabled, the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6000 et. seq.

Statutory Authority G.S. 122C-53; 143B-147; 143B-403.1; 143B-403.2.

.0204 INFORMING STAFF OF POLICIES

The governing body shall develop and implement policies to assure that all staff shall be informed at the time of employment and annually thereafter, of the rights of clients as specified in 122C, Article 3, ~~and be familiar with policies specified in this manual.~~ all applicable rules, and policies of the governing body. Documentation of receipt of information shall be signed by the staff member and remain a part of the individual's personnel record.

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

SECTION .0300 - GENERAL CIVIL, LEGAL AND HUMAN RIGHTS

.0301 SOCIAL INTEGRATION

Each client shall be encouraged to participate in appropriate and generally acceptable social interactions and activities with other clients and non-client members of the community. ~~including non-handicapped persons other than staff~~ A client shall not be prohibited from such social interactions unless restricted in writing in the client record in accordance with G.S. 122C-62(e).

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

.0302 CLIENT SELF-GOVERNANCE

The governing body shall ~~establish a process for develop and implement policy regarding~~ client input into facility governance, and encourage and support the development of client self-governance groups.

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

.0303 INFORMED CONSENT

(a) Consents required in ~~these Rules and G.S. 122C-57(f)~~ G.S. 122C-57(f) and these Rules shall be obtained in writing.

(b) ~~Information which is necessary to adequately inform the client~~ A consent shall be documented in the client record and shall include the following:

- (1) name of the procedure or treatment and its purpose expressed in laymen's terms;
- (2) evidence that the benefits, risks, possible complications and possible alternative

methods of treatment have been explained to the client or legally responsible person;

- (3) notification that the consent may be withdrawn at any time without reprisal;
- (4) specific length of time for which consent is valid;
- (5) permission granted to perform the procedure or treatment;
- (6) signature of the client or legally responsible person on written authorizations.

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

.0304 CORPORAL PUNISHMENT

Corporal punishment is prohibited, as specified in G.S. 122C-59. ~~The use of corporal punishment by employees is considered abuse and investigated as such as specified in Investigation of suspected abuse shall be in accordance with Rule .0306 of this Section.~~

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

.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.

.0306 REPORTING ABUSE, NEGLECT OR EXPLOITATION

The governing body shall develop and implement ~~procedures~~ policy to assure that all instances of alleged or suspected abuse, neglect or exploitation of clients ~~shall be~~ are reported to the County Department of Social Services as specified in G.S. 108A, Article 6 or G.S. 7A, Article 44.

Authority G.S. 7A, Article 44; 108A, Article 6; 122C-51; 122C-59; 122C-65; 122C-66; 143B-147; 143B-403.1; PAMII Act, 42 U.S.C. 10801.

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.

.0102 PROHIBITED PROCEDURES

Each governing body shall develop and implement policies regarding prohibited interventions. Such policies shall specify:

- (1) those interventions which have been prohibited by statute or rule which shall include:
 - (a) any intervention which would be considered corporal punishment under G.S. 122C-59;
 - (b) the contingent use of painful body contact;
 - (c) substances administered to induce painful bodily reactions, exclusive of Antabuse;
 - (d) electric shock (excluding medically administered electroconvulsive therapy);
 - (e) insulin shock;
 - (f) unpleasant tasting foodstuffs;
 - (g) planned non-attention to specific undesirable behaviors when the target behavior is health threatening;
 - (h) contingent deprivation of any basic necessity;
 - (i) contingent application of any noxious substances which include but are not lim-

ited to noise, bad smells or splashing with water; and

- (j) any potentially physically painful procedure or stimulus which is administered to the client for the purpose of reducing the frequency or intensity of a behavior.
- (2) those interventions determined by the governing body to be unacceptable or prohibited for use in the facility. ~~or prohibited by the funding agencies or regulations.~~

Statutory Authority G.S. 122C-51; 122C-57; 122C-59; 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 governing body shall establish develop written policies and procedures that govern the use of seclusion, restraint and iso-

lation 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) ~~(4)~~ 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) ~~(+)~~ 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) ~~(+)~~ the treatment or habilitation team, or its designee, after each use of the intervention; and
 - (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) ~~(S)~~ 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) ~~(+)~~ Any room used for seclusion or isolation time-out shall meet the following criteria:
 - (A) ~~(+)~~ The room shall be designed and constructed to ensure the health, safety and well-being of the client.
 - (B) ~~(+)~~ The floor space shall not be less than 50 square feet, with a ceiling height of not less than eight feet.
 - (C) ~~(+)~~ 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) ~~(+)~~ The walls shall be kept completely free of objects.
 - (E) ~~(+)~~ 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) ~~(+)~~ 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) ~~(+)~~ The room temperature and ventilation shall be comparable and compatible with the rest of the facility.
 - (H) ~~(+)~~ 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) ~~(+)~~ 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) ~~(+)~~ 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) ~~(+)~~ A facility employee privileged to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.
 - (B) ~~(+)~~ A qualified professional who has experience and training in the use of seclusion, restraint or isolation time-out and who has been privileged to employee 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) ~~(+)~~ Use of isolation time-out shall not exceed one hour in Intermediate Care

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- (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) ~~(4)~~ 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) ~~(4)~~ 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) ~~(4)~~ 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) ~~(4)~~ 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) ~~(m)~~ Standing orders or PRN orders shall not be used to authorize the use of seclusion, restraint or isolation time-out.
- (9) ~~(n)~~ 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) ~~(o)~~ While the client is in seclusion, restraint or isolation time-out, the following precautions shall be followed:
- (A) ~~(4)~~ 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) ~~(2)~~ 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) ~~(p)~~ Reviews and reports on the use of seclusion, restraint and isolation time-out shall be conducted as follows:
- (A) ~~(4)~~ 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) ~~(g)~~ 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) and (B) and Paragraph (h) Subparagraphs (e)(2)(B)(i) and (ii), and 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) of this Rule 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) ~~(+)~~ 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) ~~(3)~~ 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) ~~(+)~~ 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(k)(1)~~ Rule .0104(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)~~ Subparagraphs (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) ~~(+)~~ 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) ~~(5)~~ 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) ~~(+)~~ 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) ~~(+)~~ 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) ~~(4)~~ 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) ~~(4)~~ 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.

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 10 NCAC 14K .0333, .0334, 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

.0301 THERAPEUTIC AND DIAGNOSTIC PROCEDURES

In addition to the treatment procedures specified in G.S. 122C-57(a) through (f), other intrusive procedures which are not routine medical diagnostic or treatment procedures shall require the ~~express and informed written~~ consent of the client or legally responsible person in accordance with 14Q .0303, prior to their initiation except in medical emergencies. Procedures requiring written consent shall include, but are not limited to, the prescription or administration of the following drugs:

- (1) Antabuse; and
- (2) Depo-Provera when used for non-FDA approved uses.

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

.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 ~~14R .0104(k)(1)-14R .0104(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.

.0303 REFUSAL OF CONSENT

A voluntary client's refusal of consent shall not be used as sole grounds for termination or threat of termination of services unless such procedures are the only viable treatment option available.

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

SUBCHAPTER 14S - 24-HOUR FACILITIES

SECTION .0100 - SPECIFIC RULES FOR 24-HOUR FACILITIES

.0101 SCOPE

Clients of mental health, developmental disabilities and substance abuse services are provided certain rights through the General Statutes. This Subchapter delineates those rights that are relevant to ~~residential and inpatient services~~ 24-hour facilities.

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

.0102 COMMUNICATION RIGHTS

(a) Except as provided in G.S. 122C-62(e), clients in a 24-hour ~~facilities~~ facility maintain communication rights as specified in 122C-62. ~~at all reasonable times.~~

(b) In order to ensure the protection of client rights specified in G.S. 122C-62(a)(1) and G.S. 122C-62(d)(2), each facility shall make limited postage available to indigent clients.

(c) Upon request, adult clients shall have access to telephones in private areas ~~when requested by the client~~, in order to ensure the protection of the client right specified in G.S. 122C-62(b)(1). Access shall also be in accordance with Section 504 of the Rehabilitation Act of 1973 and 1978.

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

.0103 LIVING ENVIRONMENT

(a) Efforts shall be made to:

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

(b) Each client ~~may~~ shall be free to suitably decorate his room, ~~or his~~ portion of a multi-resident room, with respect to ~~the client's~~ choice, normalization principles, and with respect for the physical structure. Any restriction shall be in accordance with written governing body policy. The governing body may establish written policies and justifications which limit this right in certain circumstances such as resource limitations and for special admissions (e.g., short-term admissions where admission is for less than 30 days).

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

.0104 HEALTH, HYGIENE AND GROOMING

(a) Each client shall be assured the right to dignity, privacy and humane care in the provision of personal health, hygiene and grooming care including, but need not be limited to the:

- (1) opportunity for a shower or tub bath daily, or more often as needed;
- (2) opportunity to shave at least daily;
- (3) opportunity to obtain the services of a barber or a beautician; and
- (4) provision of linens and towels, toilet paper and soap for all clients and other individual personal hygiene articles for indigent clients. Such other articles include but are not limited to toothpaste, toothbrush, sanitary napkins, tampons, shaving cream and shaving utensil.

(b) Bathtubs or showers and toilets which ensure individual privacy shall be available.

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

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

.0105 STORAGE AND PROTECTION OF CLOTHING AND POSSESSIONS

The facility shall make every effort to protect the client's personal clothing and possessions from theft, damage, destruction, loss, and mis-

placement. This includes, but is need not be limited to, assisting the client in developing and maintaining an inventory of clothing and personal possessions if the client or legally responsible person desires.

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

.0106 CLIENT'S PERSONAL FUNDS

(a) This Rule applies to any 24-hour facilities facility which typically provide provides residential services to individual clients for more than 30 days.

(b) Competent adult clients and minors above the age of 16 shall be assisted and encouraged to maintain or invest their money in personal fund accounts other than at the facility. This shall include, but need not be limited to, investment of funds in interest-bearing accounts.

(c) If funds are managed for clients by the facility, the governing body shall develop and implement, when applicable, written policies and procedures for internal personal fund accounts which:

- (1) assure to the client the right to deposit and withdraw money;
- (2) regulate the receipt and distribution of funds in personal fund accounts;
- (3) provide for the receipt of deposits in personal fund accounts from friends, relatives or others and withdrawal by the client;
- (4) provide for the keeping of adequate financial records on all transactions affecting funds on deposit in personal fund accounts;
- (5) assure that the funds will be kept separate from any operating funds of the facility;
- (6) provide for the deduction from personal fund accounts for treatment or habilitation services when authorized by the client or legally responsible person upon or subsequent to admission of the client;
- (7) provide for the issuance of receipts to persons depositing or withdrawing funds; and
- (8) provide the client with a quarterly accounting of personal fund accounts.

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

damages done or alleged to have been done by the client:

- (1) to the facility;
- (2) an employee of the facility;
- (3) to a visitor of the facility; or
- (4) to another client of the facility.

(e) The facility may not use the fact that a client or legally responsible person does not authorize a deduction as grounds for termination or threat of termination of services.

Statutory Authority G.S. 122C-51; 122C-58; 122C-62; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS

SECTION .0400 - CLIENT RIGHTS

.0433 PROTECTION OF CLIENT RIGHTS

(a) Each area program shall ~~adopt~~ develop and implement policies ~~and procedures~~ to assure the protection of client rights for clients served by the area program ~~and its contract agencies~~ as specified in CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2, ~~(02-01-91)~~, adopted in accordance with G.S. 150B-14(c).

(b) ~~Clients of the area program and its contract agencies shall be informed of their rights and the procedures for appeal if they feel that their rights have been infringed.~~

(c) ~~Each staff member of the area program and of contract agencies shall be informed of client rights and procedures for their protection.~~

(b) As required by G.S. 122C-142, each area program is responsible for assuring that any contract agency develops and implements policies in accordance with CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2.

Statutory Authority G.S. 122C-61 through 122C-63; 143B-147.

.0434 CLIENT RIGHTS COMMITTEE

(a) Each area board shall establish at least one Client Rights Committee. The area board shall also develop ~~written policies and procedures~~ and implement policy which delineates:

- (1) composition, size, and method of appointment of committee membership;
- (2) training and orientation of committee members;

- (3) frequency of meetings;
- (4) conducting meetings and voting procedures to be followed;
- (5) identification of all area program ~~components and contract agencies~~ services which utilize intervention procedures specified in CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2, ~~(02-01-91)~~, Subchapter 14R, Section .0100;
- (6) monitoring the effectiveness of existing and proposed methods and procedures for protecting the rights of clients;
- (7) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and
- (8) other operating procedures.

(b) The Client Rights Committee shall oversee the implementation of the following client rights protections:

- (1) compliance with G.S. 122C, Article 3;
- (2) compliance with the provisions of Division publications CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2 ~~(02-01-91)~~ and CONFIDENTIALITY RULES, APSM 45-1, ~~(01-10-86)~~, adopted in accordance with G.S. 150B-14(c); and
- (3) establishment of a review procedure for any of the following which may be brought by clients, client advocates, parents, guardians, staff or others:
 - (A) client grievances;
 - (B) alleged violations of the rights of individuals or groups, including cases of alleged abuse, neglect or exploitation;
 - (C) concerns regarding the use of restrictive procedures; or
 - (D) failure to provide needed services that are available in the area program.

Nothing herein stated shall be interpreted to preclude or usurp the statutory authority of a county department of social services to conduct an investigation of abuse, neglect, or exploitation or the statutory authority of the Governor's Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client rights.

(c) The area board shall retain ultimate responsibility for the assurance of client rights and shall establish a Client Rights Committee to serve in an advisory capacity to the area board. The Client Rights Committee shall include con-

sumer and family membership and each of the three disabilities must be represented on the committee. The Client Rights Committee shall not include a majority of area board members nor any person employed by the area program or any of its contract agencies.

(d) The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of its activities with the area board. Clients shall not be identified by name in either minutes nor written or oral reports.

(e) The area board may transfer to the Client Rights Committee the responsibility for the Intervention Advisory Committee, as specified in Division publications CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2, (02/01/91), adopted in accordance with G.S. 150B-14(c).

(f) Any area program which contracts for services shall delineate in the service contract the authority of the Client Rights Committee and its relationship to the contract agency.

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

SUBCHAPTER 18Q - GROUP HOMES FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

SECTION .0700 - GROUP HOMES FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0713 CROSS-REFERENCE TO MANAGING CLIENTS' FUNDS (REPEALED)

Statutory Authority G.S. 143B-147.

SECTION .0800 - APARTMENT LIVING PROGRAMS FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0812 CROSS-REFERENCE TO MANAGING CLIENTS' FUNDS (REPEALED)

Statutory Authority G.S. 143B-147.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Aging intends to amend rule cited as 10 NCAC 22G .0408 and adopt rules cited as 10 NCAC 22K .0101, .0201 - .0204; 22L .0101, .0201 - .0204; 22M .0101 - .0103, .0201 - .0206; 22N .0101, .0201 - .0212.

The proposed effective date of 10 NCAC 22G .0408 is December 1, 1991; 10 NCAC 22K - 22N is proposed to be effective on October 1, 1991.

The public hearing will be conducted at 2:00 p.m. on August 14, 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 August 14, 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 to: Mr. Gary Cyrus at the aforementioned address or by calling him at (919) 733-8399.

CHAPTER 22 - AGING

SUBCHAPTER 22G - PROGRAM OPERATIONS

SECTION .0400 - TITLE VII NUTRITION PROGRAM

.0408 DEFINITIONS OF SERVICES

(a) The Division of Aging has established definitions of the services eligible for funding under Title III of the Older Americans Act. Services to be operated by grantees and contractors with assistance from the Division shall be consistent with these definitions.

(b) The Division of Aging's service definitions are as follows:

(1) "Information and Referral" is aimed at providing the elderly with information about services available and assisting them in gaining access. The process involves:

(A) maintenance of information about services and opportunities available;

(B) employment of qualified staff to inform of services and opportunities and to assist in taking advantage of them;

(C) identifying, with the client, the types of assistance needed, placing him or her in contact with the services, and following up.

The Unit of Service is: a one to one contact.

(2) "Outreach" is aimed at isolated elderly in need of available services who have not been able to use them. The process involves:

(A) seeking out and identifying hard-to-reach individuals;

- (B) assisting those identified to gain access to these services.
The Unit of Services is: a home visit.
- (3) "Transportation" enables elderly persons to go to and from facilities and resources in order to apply for and receive services, reduce isolation, and promote independent living. Delivery may vary from county to county based on availability of transportation resources.
The Unit of Service is: a one way trip.
- (4) "Counseling" provides direct guidance and assistance by qualified professional staff in coping with personal problems (family, emotional, psychological) and is generally offered as a special service in the focal agency for the elderly or is contracted to a specialized agency.
The Unit of Service is:
Group = staff - hour
Individual = person - hour
- (5) "Health Screening" is a preventive and maintenance service provided by trained personnel and includes:
(A) maintaining individual health history;
(B) basic examination;
(C) testing for diabetes, glaucoma, abnormal blood pressure, etc.;
(D) evaluation and counseling;
(E) referral to other agencies and follow-up.
The Unit of Service is: a case hour.
- (6) "Homemaker" services are supportive services provided by qualified paraprofessionals who are trained, equipped, assigned, and supervised by professionals within the agency to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These services must, at a minimum, meet standards established by the North Carolina Division of Social Services, Department of Human Resources. Services include: providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care, with the focus of avoiding unnecessary and expensive institutionalization. An emphasis is placed on meeting the standards of the National Home Caring Council. "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 effec-

tively, at home as long as possible. 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.

- The Unit of Service is: an hour of service.
- (7) "Chore" services include the performance of tasks incidental to activities of daily living which do not require the services of a trained homemaker or other specialist, as currently defined by the North Carolina Division of Social Services. Such services are provided to enable individuals to remain in their own homes and include: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens; and minor repairs to the house, furnishings, only if provided under professional supervision and if chore workers have received proper training for such tasks. Preferably, chore workers should be agency employees.
The Unit of Services is: an hour of service.
- (7) (8) "Home Health" services include health care prescribed by a physician and given in the home. Such services may include:
(A) skilled nursing care;
(B) occupational, physical, and speech therapy;
(C) special services to blind and visually handicapped;
(D) nutritional guidance;
(E) medical social work; and
(F) a home health aide.
The Unit of Service is: an hour of service.
- (8) (9) "Housing Assistance" includes services to obtain or maintain adequate housing; Component 1 includes direct provision and supervision of repairs (home renovation, weatherization). Component 2 involves location of funding for repairs, assistance in applying for funds, and follow-up to see that service was delivered. Component 3 assists the client in relocation to more suitable housing.
The Unit of Services is: a case hour.
- (9) (10) "Legal" services provide individual legal advice or representation in civil matters by an attorney. They may include,

but may not be limited to, a component involving advice or representation by:

- (A) a paralegal under the supervision of an attorney;
 - (B) a third year law student under the supervision of an attorney; or
 - (C) a non-lawyer in administrative public benefits problems. The Unit of Service is: one case hour of direct legal services.
- (10) ~~(14)~~ "Employment Referral" is a referral designated to help individuals find employment or link them with training programs that would qualify them for employment. Such services include:
- (A) provision of information about job opportunities;
 - (B) counseling with individuals prior to referral;
 - (C) helping employers create an environment for acceptance of the elderly and linking particular individuals with specific opportunities;
 - (D) working with employers to create job opportunities for the elderly;
- The Unit of Service is: a case hour.
- (11) ~~(12)~~ "Nutrition Services" include the range of services provided for and made accessible to nutrition program participants. Services may include: the provision of a hot meal, meeting one-third of the Recommended Dietary Allowances of the National Research Council, in a congregate setting or delivered to an individual in the home; modification in the regular diet if sufficient numbers of persons have the need and if the food and skills are available to meet the need; and education in nutrition.
- The Unit of Service is: a meal provided.
- (12) ~~(13)~~ "Day Care Services" include an organized program of services during the day in a community group setting for supporting the personal independence, and promoting the social, physical, and emotional well-being of older adults who do not need nursing care but who require complete, full-time supervision during the day in order to live in their own home or the home of a relative or older adults. These are individuals who need help with activities of daily living to maintain themselves in their own homes or older adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care. Included in these services are med-

ical examinations required for individual participants for admission to day care and periodically thereafter when not otherwise available without cost, food and food services to provide a nutritional meal and snacks as appropriate to the program, and transportation to and from the service facility when needed and not otherwise available. Services must be provided in a center certified as meeting state standards for such programs.

The Unit of Service is: a person-day.

- (13) ~~(14)~~ "Case Management" is a service designed to provide professional assessment of the total needs of an older adult and the planning, acquisition, coordination, and monitoring of all services required to meet the needs of the older adult from all service agencies in the community.

The Unit of Service is: a case hour.

- (14) ~~(15)~~ "Recreation Services" are organized activities that offer individuals the opportunity to use their leisure time in creative, enjoyable, and self-fulfilling experiences. A well-balanced program shall include active and passive services that offer physical, mental, social, cultural, and other opportunities for experiences and expression. Proper planning and coordination should maximize the efficient use of all community resources--i.e., facilities, leaders, participants and agencies. The services should be responsive to the unique and varied needs and desires of the potential participants. Recreation services include such activities as sports, music, drama, dance, arts and crafts, nature study, physical fitness, table games, tours, gardening, and camping.

The Unit of Service is: a person-hour.

- (c) For purposes of these definitions, the units of service measures will be applied as follows:

- (1) Case hour - an hour of time spent working on a case, regardless of whether the time is spent with a client or not. Work not related to a specific client would not be included in this definition.
- (2) Hour of Service - an hour of time spent in direct service at a client's home includes travel time to home.
- (3) Person-hour - an hour of time spent with a single client. Person-hours related to the provision of service to a group of clients would equal the number of hours spent with the group in service provision times the number of persons present at the time of service delivery.

- (4) Staff-hour - an hour of staff time spent on any activity related to the service identified.

Statutory Authority G.S. 143B-10; 143B-138.

SUBCHAPTER 22K - INSTITUTIONAL RESPITE CARE SERVICE

SECTION .0100 - SCOPE OF INSTITUTIONAL RESPITE CARE

.0101 SCOPE OF INSTITUTIONAL RESPITE CARE SERVICE

Primary Service. Institutional Respite Care Service is temporary placement of an individual who requires constant care or supervision, or both, out of his or her home to provide the primary, unpaid caregiver temporary relief from caregiving responsibilities.

Statutory Authority G.S. 143B-181.1(c); 143B-181.10.

SECTION .0200 - SERVICE PROVISION

.0201 SCREENING OF CLIENT

(a) Screening is a preliminary process used to determine if client eligibility is met.

(b) A screening instrument must be completed for each unpaid primary caregiver who requests service.

(c) The screening instrument must address:

- (1) Caregiver identification information;
- (2) Ability of the person requiring care to perform activities of daily living;
- (3) Ability of the person requiring care to perform instrumental activities of daily living;
- (4) Physical functioning of the person requiring care;
- (5) Caregiver's perception of the emotional well-being of the person requiring care;
- (6) Extent of support provided by the primary caregiver;
- (7) Services currently received by the person requiring care or the caregiver.

Statutory Authority G.S. 143B-181.1(c); 143B-181.10.

.0202 HOME VISIT

(a) A home visit shall be made to verify information obtained during the screening process.

(b) The screening instrument must be signed and dated by the person conducting the home visit and filed in the client record.

Statutory Authority G.S. 143B-181.1(c); 143B-181.10.

.0203 SERVICE PLANS

(a) A service plan shall be maintained by the service provider agency for each person requiring constant care or supervision, or both.

(b) The service plan shall indicate the tasks to be provided in the absence of the caregiver.

(c) The service plan must be dated and signed by the caregiver and the professional responsible for developing the service plan.

Statutory Authority G.S. 143B-181.1(c); 143B-181.10.

.0204 DOCUMENTATION/RECORDS FOR/ PERSON REQ CONSTANT CARE OR SUPVN

(a) Records shall include a completed copy of the screening instrument, documentation of home visit, and service plan.

(b) An emergency contact person must be identified and maintained in the client record.

Statutory Authority G.S. 143B-181.1(c); 143B-181.10.

SUBCHAPTER 22L - INFORMATION AND CASE ASSISTANCE

SECTION .0100 - SCOPE OF INFORMATION AND CASE ASSISTANCE

.0101 SCOPE OF INFORMATION AND CASE ASSISTANCE

Information and Case Assistance is identified as a critical service which assists older adults, their families and others acting on behalf of older adults, in their efforts to acquire information about programs and services and to obtain appropriate services to meet their needs:

- (1) "Information" includes informing people about programs and services, identifying the types of assistance they need and connecting them to appropriate service providers.
- (2) "Case Assistance" is a more intensive service for those persons who require additional assistance with negotiating the service delivery system. Case Assistance is the provision of referral, follow-up and advocacy activities on behalf of the older adult or their family, or both, to ensure that needed assistance is received and that the assistance provided meets identified needs. Case Assistance may also include a home visit to more clearly identify a client's needs for the purpose of initiating the development of a care plan for clients who do not have health related needs.

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

SECTION .0200 - SERVICE PROVISION

.0201 ELIGIBILITY FOR INFORMATION AND CASE ASSISTANCE

Those eligible for Information and Case Assistance Services are persons 60 years of age and older or persons acting on behalf of persons age 60 and older, or both, who are in need of information or services, or both.

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

.0202 RESOURCE FILE

(a) The agency providing Information and Case Assistance shall cooperatively develop, maintain, and use an accurate, up-to-date resource file that contains information on available community resources. The Information and Case Assistance provider shall update the resource file annually by survey or on-site visits.

(b) A profile shall be developed on each service organization and agency that shall include, but is not limited to: the legal name, common name, or acronym; address; telephone number; hours and days of service; services provided; area served; branch offices; known barriers to accessibility and restrictions on facility use.

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

.0203 TRAINING

The agency providing Information and Case Assistance shall make orientation and in-service training available to paid and volunteer staff.

- (1) Staff shall participate in an orientation program which, at a minimum, reviews the role, purpose, and function of Information and Case Assistance; the role of the agency; and the administrative structure and policies for providing the service.
- (2) Agencies shall also provide in-service education and on-the-job training to staff which focuses on the development of interviewing techniques and communication skills.

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

.0204 DOCUMENTATION

(a) Each agency providing Information and Case Assistance shall maintain a daily log indicating contacts made during the course of the day.

(b) The log shall include the date and general nature of the call.

(c) For those persons who receive Case Assistance, a client record shall be maintained by

the agency and shall include: client identification information; identification of client needs; a list of agencies to whom the client was referred and dates; and follow-up contacts made to or on behalf of the client and the dates.

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

SUBCHAPTER 22M - CARE MANAGEMENT

SECTION .0100 - SCOPE OF SERVICE

.0101 SCOPE OF CARE MANAGEMENT

Primary Service. Care Management is a coordinated care function which incorporates case finding, assessment and reassessments, negotiation, care plan development and implementation, monitoring, and advocacy to assist functionally impaired older adults with complex care needs in obtaining the services necessary to be safely cared for within the home and community setting.

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

.0102 DEFINITIONS

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

- (1) "Activities of daily living (ADL's)" include eating, dressing, bathing, toileting, bowel and bladder control, transfers, ambulation, and communication such as ability to express needs to others through speech, written word, signing, gestures, or communication devices.
- (2) "Instrumental activities of daily living (IADL's)" include meal preparation, medication intake, house cleaning, money management, telephone use, laundering, reading, writing, transportation, mobility, shopping, and going to necessary activities.
- (3) "Case closure" means the discontinuation of Care Management Services when the goals of the care plan have been met or when the client is no longer eligible for Care Management Services.

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

.0103 TARGET POPULATION

The target population consists of functionally impaired older adults who are at risk of abuse, neglect, exploitation, or have complex care needs, or both; and who, due to a critical time factor or the complexity of services needed, are unable to access needed services in order to remain safely at home.

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

SECTION .0200 - SERVICE PROVISION

.0201 CLIENT ELIGIBILITY

Care Management Services are limited to older adults 60 years of age or older and their spouses who meet the identified target population.

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

.0202 SCREENING

(a) Screening is a preliminary process used to determine if an individual appears to belong in the target population.

(b) A screening instrument must be completed for each person requesting Care Management Services.

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

.0203 ASSESSMENT AND REASSESSMENT

(a) The assessment and reassessment are comprehensive multidimensional methods used to determine the client's level of functioning and confirm eligibility for Care Management Services.

(b) The initial assessment and all reassessments shall be conducted in the client's home and shall 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).

(c) The assessment and reassessment shall be conducted in the client's home by a Social Worker and a Registered Nurse.

(d) A full reassessment shall be completed at least every 12 months or as the client's condition warrants.

(e) The initial assessment and reassessments shall be signed and dated by the Social Worker and the Registered Nurse and shall be maintained in the client's file.

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

.0204 CARE PLANNING

The purpose of the care plan is to identify the course of action to be followed:

- (1) Care plans for an eligible client shall be developed within 12 working days of the initial screening.
- (2) The care plan shall include, at a minimum, the following information:
 - (a) Outcome oriented goal statements and conditions for case closure;
 - (b) Both formal and informal services to be provided;
 - (c) Agencies responsible for service provision;

- (d) Frequency of service provision;
 - (e) Duration of service provision;
 - (f) Signature of the client or designated representative indicating agreement with the care plan;
 - (g) Signature of the Registered Nurse and the Social Worker developing the care plan;
 - (h) Date of care plan development.
- (3) Care plans shall be reviewed at least quarterly or more frequently as the client's condition warrants by both the Social Worker and the Registered Nurse.
 - (4) All changes to the care plan must be documented and dated on the care plan by the Social Worker and Registered Nurse, or both.

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

.0205 MONITORING

The purpose of monitoring is to guarantee continuity of services and to evaluate the client's continued eligibility for Care Management Services:

- (1) At a minimum, a monthly contact must be made to the client.
- (2) At least one contact per quarter must be conducted in the client's home.
- (3) All monitoring activities must be documented in the client's file by the appropriate professional.

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

.0206 DOCUMENTATION

Client records for Care Management Services shall include:

- (1) A completed copy of the screening instrument;
- (2) A completed copy of the initial assessment;
- (3) Completed copies of all reassessments;
- (4) Copies of the initial and any revised care plans;
- (5) Documentation of all monitoring activities;
- (6) Denial, termination or reduction of service when appropriate;
- (7) Documentation of client's approval for release of information.

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

SUBCHAPTER 22N - CONFIDENTIALITY OF CLIENT DATA

SECTION .0100 - DEFINITIONS FOR CONFIDENTIALITY OF CLIENT DATA

.0101 DEFINITIONS FOR CONFIDENTIALITY OF CLIENT DATA

Unless the context clearly specifies otherwise, the following terms are defined as follows:

- (1) "Agency" means Division of Aging, Area Agencies on Aging, or service provider.
- (2) "Client" means any applicant for, or recipient of, services administered under the auspices of the Division of Aging, or someone who makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency.
- (3) "Client information" or "client record" means any information, whether recorded or not, including information stored in computer data banks or files, relating to a client which was received in connection with the performance of any function of the agency.
- (4) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.
- (5) "Service provider" means any public or private agency from whom Division of Aging funded services are purchased or authorized.

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

SECTION .0200 - REQUIREMENTS

.0201 CONFIDENTIALITY OF CLIENT DATA

(a) Client information obtained by the Division of Aging, Area Agencies on Aging or service providers from an older person or their designated representative shall not be disclosed in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized federal, state, or other designated monitoring agencies.

(b) The agency shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy to and provide training for all persons with access to client information.

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

.0202 INFORMATION FROM OTHER COMMUNITY SERVICE ORGANIZATIONS

If the agency receives information from another community service organization or individual, then such information shall be treated as any other information generated by the State Division of Aging, Area Agency on Aging or service provider and disclosure thereof will be governed

by any condition imposed by the furnishing community service organization or individual.

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

.0203 DISCLOSURE PURSUANT TO OTHER LAWS

Whenever federal or state statutes or regulations specifically address confidentiality issues, the agency shall disclose or keep confidential client information in accordance with those federal or state statutes or regulations.

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

.0204 OWNERSHIP OF RECORDS

All client information contained in any records of the agency is the property of the agency. Employees of the agency shall protect and preserve such information from dissemination except as indicated by the policies established.

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

.0205 SECURITY OF RECORDS

(a) The agency shall provide a secure place with controlled access for the storage of client records or reports, or both, which contain client specific information.

(b) Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized to have access to such information.

(c) Only authorized individuals may remove a record or report, or both, from the storage area and that individual shall be responsible for the security of the record until it is returned to the storage area.

(d) The agency shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Division of Archives and History, and state and federal statutes and regulations.

(e) The Division of Aging, Area Agencies on Aging and service providers shall establish written procedures to prevent accidental disclosure of client information from automated data processing systems.

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

.0206 RELEASE OF CLIENT INFORMATION

(a) No client identifying information, except as referenced in Rule .0205 of this Section, which is maintained by the Division of Aging, Area Agency on Aging or service provider shall be released to other individuals or community service

organizations without obtaining a signed consent for release of information from the client or legal guardian.

(b) The consent for release of information shall include, at a minimum, the following items:

- (1) Name of the provider and recipient of the information;
 - (2) The extent of information to be released;
 - (3) The name and dated signature of the client or client representative;
 - (4) A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
 - (5) Length of time the consent is valid.
- (c) The client may alter the form to contain other information which may include but is not limited to:
- (1) A statement specifying the date, event or condition upon which the consent may expire even if the client does not expressly revoke the consent;
 - (2) Specific purpose for the release.
- (d) A copy of the signed consent for release of information shall be maintained in the client record.

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

.0207 INFORMED CONSENT

Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- (1) Contents to be released;
- (2) That there is a definite need for the information;
- (3) That the client can give or withhold the consent and the consent is voluntary;
- (4) That there are statutes and regulations protecting the confidentiality of the information.

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

.0208 CLIENT ACCESS TO RECORDS

(a) Confidentiality of information about himself is the right of the client. Upon written or verbal request, the client shall have access to review or obtain without charge a copy of the information in his records with the following exceptions:

- (1) Information that the agency is required to keep confidential by state or federal statutes or regulations;
- (2) Confidential information originating from another community service organization;

(3) Information that would breach another individual's right to confidentiality.

(b) Client's requesting access to the information contained in his record as promptly as feasible but no more than five working days after receipt of the request.

(c) The Director or his delegated representative shall be present when the client reviews the record.

(d) The Director or his delegated representative must document in the client record the review of the record by the client.

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

.0209 CONTESTED INFORMATION

(a) A client may contest the accuracy, completeness or relevancy of the information in his record.

(b) A correction of the contested information, but not the deletion of the original information if it is required to support receipt of state or federal financial participation, shall be inserted in the record when the Director or his designee concurs that such correction is justified.

(c) When the Director or his delegated representative does not concur, the client shall be allowed to enter a statement in the record.

(d) Such corrections and statements shall be made permanent part of the record and shall be disclosed to any recipient of the disputed information.

(e) If a delegated representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.

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

.0210 WITHHOLDING OF INFORMATION FROM THE CLIENT

(a) When the Director or delegated representative determines on the basis of the exceptions outlined in Rule .0208 of this Section to withhold information from the client record, this reason shall be documented in the client record.

(b) The Director or delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in Rule .0208 of this Section the decision to withhold the information is based.

(c) If confidential information originating from another community service organization is being withheld, the client shall be referred to that community service organization for access to the information.

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

.0211 DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT

Client information included in the client record may be disclosed without the consent of the client under the following circumstances:

- (1) To other employees of the agency for the purpose of making referrals, supervision, consultation or determination of eligibility.
- (2) Between the service provider, Area Agency on Aging and Division of Aging for the purposes of reporting.

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

.0212 INFORMATION NEEDS OF SERVICE PROVIDERS

(a) Client information may be disseminated to service providers in accordance with the release of information statement included on the client registration form.

(b) Any further disclosure will require a signed release of information form from the client.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0312.

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

The public hearing will be conducted at 1:30 p.m. on August 15, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by August 15, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N. C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

.0312 TRANSFER OF RESOURCES

In accordance with 42 U.S.C. 1396p(c), an individual who transfers resources and receives compensation that is less than the fair market value may be ineligible to receive nursing facility services.

- (1) As provided for by P.L. 100-360, Section 303(g) amended by P.L. 100-485, Section 608(d)(16)(D), the provisions of 42 U.S.C. 1396p(c) shall be effective for all transfers of resources, except transfers between spouses, occurring on or after July 1, 1988. The provisions of 42 U.S.C. 1396p(c) shall be effective for transfers between spouses, occurring on or after October 1, 1989.

- (2) As allowed under 42 U.S.C. 1396p(c)(2)(D), the provisions of 42 U.S.C. 1396p(c) for ineligibility for nursing home services due to transfer of resources shall not be applied:

- (a) To ~~to~~ individuals who transferred resources after July 1, 1988 and before March 15, 1989 and were found eligible prior to March 15, 1989;

- (b) When it is determined by the agency's judgment that the applicant or recipient is a victim of fraud and did not take the action with the intent of becoming eligible for Medicaid.

Authority G.S. 108A-54; 108A-58; P.L. 100-360; P.L. 100-485; 42 U.S.C. 1396p(c); 42 C.F.R. 435.121; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845.

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 12 .0306 - .0307, .0312, .0317, .0321 - .0323, .0420, .0426 - .0427, .0431, .0434, .0447 - .0448, .0507, .0514, .0517, .0526, .0553, .0555 - .0557; repeal rule(s) cited as 11 NCAC 12 .0303, .0305, .0318, .0402, .0414, .0504, .0527, .0537, .0554, .0558; and adopt rule(s) cited as 11 NCAC 12 .0325 - .0326, .0458 - .0460, .0559, .1101 - .1108, .1201 - .1211.

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

The public hearing will be conducted at 10:00 a.m. on August 14, 1991 at the Dobbs Building,

3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Susan Goff, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Susan Goff at (919) 733-5060 or Ellen Sprekel at (919) 733-4700.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

.0303 REBATES ON INSURANCE COMPANIES EMPLOYEES: PROHIBITED (REPEALED)

Statutory Authority G.S. 58-54.4(8).

.0305 TWISTING OR OTHER PRACTICES INJURIOUS TO THE PUBLIC (REPEALED)

Statutory Authority G.S. 58-9(1); 58-42.1; 58-54.4.

.0306 LIFE: HEALTH AND ACCIDENT COVERAGES: POLICY OUT OF STATE

Where a group master policy is written upon application taken outside this jurisdiction covering individuals in this state the certificate covering lives within this state shall be considered "North Carolina business" and reported through the office of some general agent, resident in or having territory within the state. This Rule does not apply to group mortgage and blanket scholastic policies where the policy must be issued in North Carolina.

Salaried home office group representatives will be permitted to assist in taking applications for certificates under a master policy only when such home office representatives are accompanied by a duly licensed resident agent.

Statutory Authority G.S. 58-3-1; 58-2-40.

.0307 FILING APPROVAL: LIFE: ACCIDENT AND HEALTH FORMS

(a) All life, annuity, accident and health and health maintenance organization forms must be filed with and approved by the Commissioner before use.

(b) The following procedure should be used in filing life, annuity, and accident and health and health maintenance organization forms for approval by this Department:

(1) Filing letter should be submitted in duplicate with the Federal Employee Identification

Number (FEIN); list forms by number and descriptive title; indicate if new and briefly describe use of form; if revision identify form being replaced by number and approval date;

(2) If riders, endorsements or certificates are filed separately, indicate policy forms with which they are used;

(3) Only one copy of the form is required to be submitted unless the company desires a stamped copy;

(4) All forms should be completed with specimen data;

(5) Rates by age and mode of payment including the actuarial memorandum should be attached to each form requiring a premium;

(6) Submit evidence of approval of subject identical filing by the state of domicile;

(7) Submit a listing of states in which subject identical filing has been submitted and a listing of states which have:

(A) approved; or

(B) disapproved, including the reasons for disapproval;

(8) Submit copies of any endorsements, riders or changes in subject filing required by any jurisdiction as a condition of approval;

(9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers;

(10) Submit copies of sales promotion material to be used in North Carolina for annuities and interest sensitive life products.

(c) Premium rate revisions must be filed in triplicate, and include evidence of this Department's most recent approval of the policy rate revision.

(d) Remittance of filing fee shall be within 45 days of filing fee notice or the file will be closed.

(e) The status of forms and rates filed with this Department must be requested in writing by the filer concerning forms and rates not acted upon within 60 days after the date of the filing letter.

(f) A written notice must be given to the Department of Insurance by the filer prior to deeming forms and rates approved.

Statutory Authority G.S. 58-2-40; 58-6-5; 58-51-1; 58-58-1; 58-65-1; 58-65-40.

.0312 ACCIDENTAL DEATH BENEFIT: INHALATION OF GAS: ETC

A policy or rider providing benefits for accidental death may not exclude the involuntary inhalation of gas and fumes and involuntary taking of poison. Nor may it exclude accidental

death as a result of involuntary exposure to nuclear explosion, nuclear energy or nuclear elements, following:

- (1) The involuntary inhalation of gas and fumes and the involuntary taking of poison.
- (2) Accidental death as a result of involuntary exposure to nuclear explosion, nuclear energy or nuclear elements.
- (3) The involuntary exposure to hazardous waste and other toxins.
- (4) Unintentionally self-inflicted bodily injury.
- (5) Bacterial infection resulting from accidental injury.
- (6) Accidental ingestion of ptomaine.

Statutory Authority G.S. 58-2-40; 58-51-95.

.0317 ORIGIN OF SICKNESS: DESCRIPTION

The use of a term more restrictive than "first manifested" in the determination of when a disease or sickness begins is prohibited. The term "prudent person" cannot be used as a condition to establish when a disease or sickness begins.

Statutory Authority G.S. 58-2-40; 58-51-95; 58-58-1; 58-65-1; 58-65-40; 58-67-1; 58-67-150.

.0318 PREMIUM INCREASES: GROUP (REPEALED)

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-195; 58-249; 58-254.7; 58-293.

.0321 RATE FILING: HMO

(a) All schedules of premiums for enrollee coverage for health care services, or amendment thereto, shall be filed in duplicate in accordance with 11 NCAC 12 .0307(b)(5), indicating whether the schedule is original or amended.

(b) All filings shall be accompanied by:

- (1) A certification by the chief executive officer of the corporation that the premiums applicable to an enrollee are not individually determined based on the status of his health;
- (2) A certification by an actuarial expert that such premiums are established in accordance with actuarial principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory;
- (3) Actuarial data supporting the schedule of premiums;
- (4) Such other data deemed necessary by the commissioner to determine whether to approve or disapprove the filing;
- (5) Actuarial data and rates must be filed in triplicate.

Statutory Authority G.S. 58-67-50; 58-67-150.

.0322 REGULAR CARE AND ATTENDANCE OF A PHYSICIAN

As used in life, accident and health and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not, however, restrict the right of the company to the insurer, at its own expense, to periodically examine or cause to have examined the insured according to the terms of the contract of insurance.

Statutory Authority G.S. 58-2-40; 58-51-1; 58-65-1.

.0323 COMPLICATION OF PREGNANCY

Complications of pregnancy may not be treated differently from any other illness or sickness under the contract. A non-elective cesarean section is considered a complication of pregnancy.

Statutory Authority G.S. 58-2-40; 58-3-120; 58-51-1; 58-51-95; 58-63-15(7).

.0325 WORKERS' COMPENSATION

Benefits for occupational injury or sickness shall be provided when the insured is ineligible for workers' compensation benefits.

Statutory Authority G.S. 58-2-40; 58-51-1; 58-51-95.

.0326 APPLICATION FOR INSURANCE REQUIRED

Written applications for life, annuity and accident and health insurance must be taken from North Carolina residents applying for such insurance and, except in the case of direct response business, said application must be signed by a licensed agent for this state. The signature of the licensed agent must be his actual signature.

Statutory Authority G.S. 58-2-40; 58-33-25.

SECTION .0400 - LIFE: GENERAL NATURE

.0402 FAMILY LIFE POLICIES AND DEPENDENT TERM RIDERS (REPEALED)

Statutory Authority G.S. 58-195.

.0414 GROUP LIFE: STATE EMPLOYEES:

OTHER POLITICAL SUBDIVISION
(REPEALED)

Statutory Authority G.S. 58-210(6).

**.0420 APPROVAL OF CONTRACTS:
ADDITIONAL INFORMATION
REQUIRED**

A company submitting variable annuity contracts to the Department for approval shall furnish the following information with each variable annuity contract filing:

- (1) evidence that a copy of all appropriate information has been registered with the Securities and Exchange Commission,
- (2) a copy of all sales promotion material to be used in North Carolina,
- (3) a copy of the variable annuity application form,
- (4) a copy of the "Suitability Questionnaire" form. and This shall be a form, either a separate form or a part of the application, containing questions designed to determine whether the proposed variable annuity contract meets the reasonable objectives and needs of the applicant.
- (5) a copy of all proposed riders to be used with the variable annuity contract.

Statutory Authority G.S. 58-2-40; 58-7-95.

**.0426 LIFE INSURANCE ADVERTISING:
FORM AND CONTENT**

(a) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive.

Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(b) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "estate accumulation period," "certificate of deposit," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan" or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he will receive, or that it is possible that he will receive, something other than a policy or

some benefit not available to other persons of the same class and equal expectation of life.

Statutory Authority G.S. 58-2-40; 58-58-40.

**.0427 LIFE INSURANCE ADVERTISING:
DISCLOSURE REQUIREMENTS**

(a) The information required to be disclosed by 11 NCAC 12 .0424 to .0433 shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) No advertisement shall omit material information or use words or phrases in other than their customary insurance meaning or use words, phrases, statements, references or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

(c) In the event an advertisement uses "Non-Medical", "No Medical Examination Required" or similar terms where issue is not guaranteed, such terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

(d) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

(e) An advertisement shall prominently describe the type of policy advertised.

(f) An advertisement of a policy marketed by the direct response techniques shall not state or imply that because there is no agent or commission involved there will be cost saving to prospective purchasers unless such is the fact.

(g) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(h) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

(i) Nonguaranteed Policy Elements:

- (1) An advertisement shall not utilize or describe nonguaranteed policy elements in a manner which is misleading or has the capacity or the tendency to mislead.
- (2) An advertisement shall not state or imply that the payment or amount of nonguaranteed policy elements is guaranteed. If nonguaranteed policy elements are illustrated, they must be based on the insurer's current scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.
- (3) An advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed element.
- (4) If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way, such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer's current or anticipated experience, the advertisement may indicate any such limitation of the insurer's right.
- (5) An advertisement shall not refer to dividends as "tax free" use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.
- (j) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.
- (k) Testimonials or Endorsements by Third Parties:
 - (1) Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial, the insurer makes as its own all of the statements contained therein, and such statements are subject to all provisions of 11 NCAC 12 .0424 to .0433.
 - (2) If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be disclosed in the advertisement.
- (3) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall be disclosed in the advertisement.
- (l) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.
- (m) Introductory, Initial or Special Offers and Enrollment Periods:
 - (1) An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing of its policies.
 - (2) An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.
 - (3) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the ad-

vertisement which contains the full rate schedule for the policy being advertised.

- (4) An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period with the number of enrollment periods being limited to no more than two in any one calendar year for a particular insurance product. The advertisement shall specify the date by which the applicant must mail the application, which shall not be later than 10 days and not more than 40 days on which such enrollment period is advertised for the first time. This shall apply to all advertising media--i.e., mail, newspapers, radio, television, magazines and periodicals--by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This does not apply to the use of a termination of cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this shall be applied separately to each such sponsoring organization.

(n) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group or quasi-group and as such enjoy special rates, dividends or underwriting privileges unless such is the fact.

(o) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services or methods of marketing.

(p) It shall be unlawful to make use directly or indirectly, of any method of marketing which

fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance agency.

Statutory Authority G.S. 58-2-40; 58-58-40; 58-63-15.

.0431 LIFE INSURANCE ADVERTISING: ENFORCEMENT PROCEDURES

(a) Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by this department. All such advertisements shall be maintained in said file for a period of either ~~four~~ three years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

(b) Each insurer subject to the provisions of 11 NCAC 12 .0424 to .0433 shall file with this department with its annual statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of such year when 11 NCAC 12 .0424 to .0433 were in effect, complied or were made to comply in all respects with the provisions of 11 NCAC 12 .0425 to .0433 and the insurance laws of this state as implemented and interpreted by 11 NCAC 12 .0424 to .0433.

(c) Advertisements written by agents, which describe a policy in any manner, must be submitted to the home office of the insurance company offering the policy for its approval before use by the agent. Each agent shall maintain a record of all such advertisements and home office approvals for at least three years.

Statutory Authority G.S. 58-2-40; 58-58-40; 58-63-15.

.0434 VARIABLE LIFE INSURANCE DEFINITIONS

As used in this Regulation:

- (1) "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its variable life insurance separate

- accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlled person, or person providing investment advice or any member of the immediate family of such person.
- (2) "Agent" means any person, corporation, partnership, or other legal entity which is licensed by this state as a life insurance agent.
 - (3) "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.
 - (4) "Benefit base" means the amount not less than the amount specified under .0438(b)(2) of this Section, specified by the terms of the variable life insurance policy to which the difference between the net investment return and the assumed investment rate is applied in determining the variable benefits of the policy.
 - (5) "Commissioner" means the Insurance Commissioner of this state.
 - (6) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than 10 percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
 - (7) "General account" means all assets of the insurer other than assets in separate accounts established pursuant to G.S. 58-79.2 of the insurance laws of this state, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.
 - (8) "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.
 - (9) "May" is permissive.
 - (10) "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.
 - (11) "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.
 - (12) "Person" means an individual, corporation, partnership, association, trust, or fund.
 - (13) "Separate account" means a separate account established for variable life insurance pursuant to G.S. 58-79.2 of the insurance laws of this state or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.
 - (14) "Shall" is mandatory.
 - (15) "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of the minimum death benefit.
 - (16) "Variable life insurance policy" means any individual or group policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to G.S. 58-79.2 of the insurance laws of this state or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Statutory Authority G.S. 58-2-40; 58-7-95.

.0447 FREE LOOK PROVISION

An insurer, prior to the time that any individual life insurance or annuity policy is issued for delivery or delivered, shall ensure that a provision is displayed by sticker or printed on the face of each life insurance or annuity policy, containing the following as appropriate:

- (1) if there is replacement of existing life insurance by an insurer not utilizing an agent in the sale or delivery of its policies, a "Thirty Day Free Look" provision;
- (2) in all other cases, a "Ten Day Free Look". The free look provision shall afford the policyholder a period of time, following receipt of the policy, during which the policy may be returned to the company for a prompt refund of the premium paid. The same applies to any group life insurance or annuity policy or certificate which contains a free look provision.

Statutory Authority G.S. 58-2-40; 58-58-1.

.0448 WAITING PERIODS ON LIFE INSURANCE RIDERS

On all life insurance riders providing additional benefits, attached subsequent to the date of the policy, a sticker shall be attached in a prominent place on the rider stating, when appropriate, substantially the following: "PLEASE READ THIS RIDER CAREFULLY".

THE WAITING PERIODS IN THE SUICIDE AND/OR INCONTESTABILITY PROVISIONS ARE DIFFERENT FROM THOSE IN THE POLICY AND BEGIN ON THE EFFECTIVE DATE OF THE RIDER.

Statutory Authority G.S. 58-2-40; 58-58-1.

.0458 INTEREST CHARGES ON REINSTATEMENT

The interest chargeable on delinquent premiums under a life or annuity policy reinstatement provision shall not exceed the prevailing fixed, maximum interest chargeable on life insurance policy loans.

Statutory Authority G.S. 58-2-40; 58-58-1.

.0459 SUICIDE AND/OR INCONTESTABILITY

Waiting periods in the suicide and or incontestability provisions of life and annuity policies may not exceed two years from the policy effective date.

Statutory Authority G.S. 58-2-40; 58-58-1.

.0460 PREARRANGEMENT INSURANCE DISCLOSURE

The amount of prearrangement insurance policy proceeds payable to the provider of a funeral service under a prearrangement contract shall not exceed the lesser of the total cost of the funeral service or the policy proceeds.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-60-35.

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

.0504 APPROVAL OF FILING: 90 DAY DEEMER NOT IN EFFECT (REPEALED)

Statutory Authority G.S. 58-254.7; 58-370(a).

.0507 FRATERNAL ORDERS: SOCIETIES AND ASSOCIATIONS

To the extent there is no conflict with the provisions of Article 24 or 25 of General Statute Chapter 58, every fraternal order, society or association writing accident and health insurance in this state must comply with the provisions of Articles 26, 26A, 27 and 27A, 50, 51 and 52 of Chapter 58 regarding accident and health insurance.

Statutory Authority G.S. 58-2-45.

.0514 COORDINATION: GROUP A/H CONTRACT BENEFITS: GROUP COVERAGES

Purpose. In order to promote consistency in liability for claims and claims determination for Group Accident and Health coverage, the department shall require a uniform order of benefits determination as follows:

- (1) Applicability:
 - (a) This Coordination of Benefits ("COB") provision applies to this plan when a employee or the employee's covered dependent has health care coverage under more than one plan. "Plan" and "This Plan" are defined in (2)(a) and (b) of this Rule.
 - (b) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:
 - (i) Shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but

- (ii) May be reduced when, under the order of benefit determination rules, another plan determines its Section (IV) Effect on the Benefits of this plan.

(2) Definitions:

- (a) A "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment:
 - (i) True group insurance. ~~whether insured or self-insured.~~ This includes prepayment, group practice or individual practice coverage. It does not include school accident-type coverage, blanket, franchise individual, automobile and homeowner coverage.
 - (ii) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

Each contract or other arrangement for coverage under (2)(a) (i) or (ii) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

- (b) "This Plan" is the part of the group contract that provides benefits for health care expenses.
- (c) "Primary Plan"/"Secondary Plan". The order of benefit determination rules state whether this plan is a Primary Plan or Secondary Plan as to another plan covering the person. When this plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When there are more than two plans covering the person, this plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.
- (d) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid. Total benefits paid must be equal 100 percent

of necessary medical expenses covered by both plans.

- (e) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this COB provision or a similar provision takes effect.
 - (3) Order of Benefit Determination Rules:
 - (a) General. When there is a basis for a claim under this plan and another plan, this plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:
 - (i) the other plan has rules coordinating its benefits with those of this plan; and
 - (ii) both those rules and this plan's rules, in (3)(b)(ii)(B) of this Rule, require that this plan's benefits be determined before those of the other Plan.
 - (b) Rules. This plan determines its order of benefits using the first of the following rules which applies:
 - (i) Non-dependent/Dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.
 - (ii) Dependent Child/Parents Not Separated or Divorced. Except as stated in (3)(b)(iii)(B) of this Rule, when this plan and another plan cover the same child as a dependent of different persons, called "parents":
 - (A) the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but
 - (B) if both parents have the same birthday, the benefits of the plan that has covered a parent for a longer period of time are determined before those of the plan that covered the other parent for a shorter period of time.
- However, if the other plan does not have the rule described in Paragraph (3)(a) in this Rule, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.
- (iii) Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

- (A) first, the plan of the parent with custody of the child;
- (B) then, the plan of the spouse of the parent with custody of the child; and
- (C) finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. In this Rule, (3)(b)(iii)(C) does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

- (iv) Active Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have (3)(b)(iv), and if, as a result, the plans do not agree on the order of benefits, (3)(b)(iv) is ignored.

- (v) Longer/Shorter Length of Coverage. If more of Paragraph (3) of this Rule determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter time.

Statutory Authority G.S. 58-2-45; 58-51-1; 58-65-1; 58-65-40.

.0517 ACCIDENT AND HEALTH ADVERTISING: DEFINITIONS

The following definitions are applicable to accident and health advertising Rules 11 NCAC 12 .0516 to .0536 only:

- (1) "Advertisement" is defined as:
 - (a) printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards and similar displays; and
 - (b) descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and

- (c) prepared sales talks, presentations and material for use by agents, brokers and solicitors.
- (2) "Policy" is defined as any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides long term care, medicare supplement, accident or sickness benefits or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts.
- (3) "Insurer" is defined as any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, fraternal benefit society, health maintenance organization, and any other legal entity which is defined as an "insurer" in the insurance code of this state and is engaged in the advertisement of a policy as "policy" is herein defined.
- (4) "Exception" is defined as any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.
- (5) "Reduction" is defined as any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.
- (6) "Limitation" is defined as any provision which restricts coverage under the policy other than an exception or a reduction.
- (7) "Institutional advertisement" is defined as an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of accident and sickness insurance, or the promotion of the insurer.
- (8) "Invitation to inquire" is defined as advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable, and which may contain:
 - (a) the dollar amount of benefits payable; and
 - (b) the period of time during which the benefits are payable; provided the advertisement does not refer to cost; An advertisement which specified either the dollar amount of benefit payable or the period of time during which the benefit is

payable shall contain a provision in effect as follows:

"For costs and further details of the coverage, including exclusions, any reductions or limitations and terms under which the policy may be continued in force, see your agent or write to the company."

- (9) "Invitation to contract" is defined as an advertisement which is neither an invitation to inquire nor an institutional advertisement.

Statutory Authority G.S. 58-2-40; 58-63-15; 58-65-1; 58-65-40; 58-67-1; 58-67-150.

**.0526 ACCIDENT AND HEALTH
ADVERTISING OF PLAN OR
POLICIES**

When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.

When an advertisement ~~which is an invitation to contract~~ refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

Statutory Authority G.S. 58-2-45; 58-63-15.

**.0527 ACCIDENT AND HEALTH
ADVERTISING: COMPARISONS:
STATEMENTS (REPEALED)**

Statutory Authority G.S. 58-9(1); 58-54.4.

**.0537 PRE-EXISTING CONDITIONS:
INSURED'S AGE OVER 65 (REPEALED)**

Statutory Authority G.S. 58-251.1; 58-252.

**.0553 EXCESS INSURANCE:
NON-DUPLICATION OF COVERAGE**

(a) An A and H policy with a nonduplication of coverage benefit may be permitted, if it contains the following sticker on the face in red:

EXCESS INSURANCE

This policy is not intended to be issued where other medical insurance exists. If other medical insurance does exist at the time of the claim, then the amounts of benefit payable by such other medical insurance will become the deductible amount of this policy if such benefits exceed the deductible amount shown in the Schedule of Benefits.

Such sticker shall be in red bold face type the size of which shall not be less than 14 points. The

use of a rubber stamp will not satisfy this requirement.

(b) Non-duplication of coverage benefit in Blanket Insurance shall be permitted when premiums are non-contributory and 100 percent of the participants are covered.

Statutory Authority G.S. 58-2-35; 58-51-1; 58-65-1; 58-65-40.

**.0554 STOP-LOSS COVERAGE -
REQUIREMENTS (REPEALED)**

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

**.0555 LONG TERM CARE INS - REQMTS:
LONG TERM CARE POLICY REQMTS**

(a) Definitions:

- (1) Long-Term Care Insurance is defined as any contract of insurance offering institutional or noninstitutional support in order to restore deteriorating health and to maintain functional independence. Such services for an acute or chronic physical or mental impairment, or short term illness or injury, include but are not limited to assistance with daily living, medical or rehabilitative care, and home health care.
- (2) In regard to Skilled, Intermediate, Custodial, or Home Health Care, when the insured receives definitive treatment for these services regardless of the type of facility or setting the insured is confined in, benefits are payable for the service received based on the benefits of the contract for that service.
- (3) Custodial or Domiciliary Home facilities will be considered the same for insurance purposes.

(b) The following provisions are required:

- ~~(1) Prior skilled nursing home confinement may not be required to satisfy eligibility for benefits in lower levels of care.~~
- ~~(2) Prior hospitalization may not be required to satisfy eligibility for long-term care benefits.~~
- (1) ~~(3)~~ Long-term care insurance policies must provide benefits for at least three levels of care and provide the same duration for each level of care for a minimum of 12 months.
- (2) ~~(4)~~ Coordination or non-duplication of benefits is permitted between true group long-term care policies only.
- (3) ~~(5)~~ The loss ratio is required to be at least 60 percent for individual policies and at least 75 percent for group policies.

- (6) Unless the solvency of the insurer is at risk all individual Long Term Care policies must be guaranteed renewable.
- (4) Custodial care which is administered for assistance of the patient in performing the activities of daily living cannot be denied based on the type of facility care is received in, but rather must be provided as long as the insured is confined as an in-patient in any facility licensed by the state regardless of whether or not that facility is commonly understood to be or is defined as a long-term care facility.
- (5) The definition of facilities must include language that facility or setting complies with the North Carolina Licensure Facility Act, Chapter 131D and Chapter 131E.
- (6) No long-term care policy, contract, or certificate may use waivers to exclude, limit or reduce benefits for specifically named or described pre-existing diseases or physical conditions.

Statutory Authority G.S. 58-4-40; 58-51-1; 58-51-95; 58-55-30.

.0556 HOME HEALTH CARE POLICY REQUIREMENT

All Home Health Care Policies shall have the notice printed in contrasting type or color on the face of the policy as follows: "This Is Not A Long-Term Care Policy - This Policy Provides Home Health Care Benefits Only - Read Carefully". Home health care policies must comply with G.S. 58-252, G.S. 58-51-60 and the following items:

- (1) Prior hospitalization or skilled nursing home confinement may not be required to satisfy eligibility for benefits.
- (2) Benefits shall be provided without a physician certification that the insured or claimant would need medical care in a skilled nursing facility or hospital setting.
- (3) Home health benefits cannot be limited to acute conditions.

Statutory Authority G.S. 58-2-40; 58-51-1; 58-51-95.

.0557 POLICIES CONTAINING A TERMINATION OR CANCELLATION PROVISION

(a) Any policy or certificate of insurance which may be terminated for reasons other than non-payment of premium or the insured's stated age must be affixed with a notice referring the insured to the renewal provision. Such notice must appear in 14 point bold red print and read as follows:

Important Cancellation Information - Please Read The Provision Entitled, ".....", Found On Page "...".

(b) Laser printed policies may be excused from this red print requirement provided the notice is in bold face print. Companies certify that policy forms are produced by laser print in order to exercise this excuse.

Statutory Authority G.S. 58-2-40; 58-51-1.

.0558 PREMIUM REVISION (REPEALED)

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

.0559 PRECERTIFICATION

Policies requiring precertification must contain a disclosure of penalties for benefits and services that are not precertified.

Statutory Authority G.S. 58-50-60.

SECTION .1100 - MORTGAGE CONSOLIDATION

.1101 APPLICATION

These Rules apply to:

- (1) All consolidations, whether the old coverage is provided under an individual or a group policy; and
- (2) All mortgage insurance offered, issued, or delivered in this state, through the mail or otherwise, in connection with consolidations.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1102 DEFINITIONS

In this Regulation, unless the context clearly indicates otherwise:

- (1) "Consolidation" means any transaction in which a financial institution or servicer makes its premium collection services available to its mortgage debtors in connection with a particular insurer's ("new insurer") offer of mortgage insurance, which offer is made to debtors who, immediately prior to the offer, had mortgage insurance with another insurer ("old insurer") and were paying premiums for that insurance with their monthly mortgage payments.
- (2) "Financial institution" or "servicer" means any entity or organization that services mortgage loans by collecting and accounting for monthly mortgage payments.
- (3) "Loan transfer" means a transaction in which the servicing of a block of mortgage loans is transferred from one servicer to another. This includes, but is not limited to,

a transfer of servicing to a new servicing location which occurs within a financial institution following, and as a result of, a merger or acquisition.

- (4) "Loan transfer consolidation" means a consolidation involving debtors whose mortgage loans have been transferred from one servicer to another.
- (5) "Mortgage" or "mortgage loan" means an indebtedness which is secured by real estate and which is not subject to N.C.G.S. Chapter 58, Article 57.
- (6) "Mortgage insurance" means group or individual life, individual accidental death, or individual disability insurance, or any combination thereof, designed to pay all or part of a mortgage loan in the event of the insured's death or disability.
- (7) "New coverage" or "new plan" means the mortgage insurance coverage or mortgage insurance plan for which the financial institution collects premiums beginning on the effective date of a consolidation.
- (8) "Old coverage" or "old plan" means the mortgage insurance coverage or mortgage insurance plan the financial institution collected premiums for immediately prior to the consolidation.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1103 GENERAL REQUIREMENTS

No insurer shall participate in any consolidation unless it complies with the following requirements:

- (1) The offer of new coverage must be made on a timely basis:
 - (a) In a loan transfer consolidation, the offer of new coverage to the prospective insured must be made as soon as reasonably possible. If the offer of new coverage is not made at least 30 days prior to the proposed effective date of the new coverage, the insurer shall notify the debtor, in writing, that he has the right to an unconditional refund of all premiums paid since the transfer date provided he exercises the right, in writing, within 30 days from the date of the notification.
 - (b) In all other consolidations, the offer of new coverage shall be made to the prospective insured at least 30 days prior to the proposed effective date of the new coverage.
- (2) A group certificate or individual policy shall be delivered to each debtor insured under the new plan. In addition to all other requirements of N.C.G.S. Chapter 58 appli-

cable thereto, the group certificate or individual policy shall include the following information:

- (a) The name or names of the single or joint insureds;
 - (b) Identification of the insured mortgage;
 - (c) The amount of insurance under the new plan;
 - (d) The premium for the new coverage;
 - (e) The effective date of the new coverage; and
 - (f) The beneficiary for the new coverage. If the insured had the right to name a beneficiary under the old contract, the insured shall retain this right under the new contract.
- (3) No group certificate or individual policy evidencing the new coverage shall include a contestability clause or, in the case of mortgage life insurance, a provision excluding suicide.
 - (4) Notwithstanding the provisions of N.C.G.S. 58-58-140, all group mortgage life insurance certificates issued in connection with any consolidation shall include a conversion privilege permitting an insured debtor to convert, without evidence of insurability, to an individual policy of decreasing term insurance within 30 days of the date the insured debtor's group coverage is terminated for reasons other than the non-payment of premiums. The initial amount of coverage under the individual policy shall be an amount equal to the amount of coverage terminated under the group policy and shall decrease over a term that corresponds with the scheduled term of the insured debtor's mortgage loan. The premium for the individual policy shall be the same premium the insured debtor was paying under the group policy.
 - (5) Except for offers of new coverage made pursuant to Rules .1104, .1105, and .1107 of this Section, the new coverage shall be effectuated for the prospective insured only after the new insurer receives an application which has been signed by the prospective insured.
 - (6) Except as provided in Rules .1104, .1105, and .1107 of this Section, the new insurer must calculate premiums for the new coverage on the basis of its own rates, the prospective insured's then attained age, if applicable, and the amount of insurance offered.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1104 LOAN TRANSFER CONSOLIDATIONS

(a) In a consolidation conducted as a result of a loan transfer, the offer of new coverage may be based on the same premium the prospective insured was paying for his old coverage, and a signed application need not be obtained, if the new insurer complies with all applicable requirements of this Regulation and N.C.G.S. Chapter 58, and the following conditions are met:

- (1) The old coverage is accidental death insurance, disability insurance, or group mortgage life insurance.
- (2) The amount of insurance provided by the new plan must be the same or greater than provided by the old plan.
- (3) All of the benefits provided by the old plan, including but not limited to accidental death riders and waiver-of-premium benefits, must be provided by the new plan.

(b) Individual policies of mortgage life insurance may not be consolidated pursuant to this Section.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1105 OTHER CONSOLIDATIONS

In all other consolidations (excluding loan transfer consolidations) the offer of new coverage may be based on the same premium the prospective insured was paying for his old coverage, and a signed application need not be obtained, if the new insurer complies with all applicable requirements of this Regulation and N.C.G.S. Chapter 58, and the following conditions are met:

- (1) The old coverage is group mortgage life insurance, accidental death insurance, or disability insurance.
- (2) The amount of insurance provided by the new plan must be the same or greater than provided by the old plan.
- (3) All the benefits provided by the old plan, including but not limited to accidental death riders and waiver-of-premium benefits, must be provided by the new plan.
- (4) Individual policies of mortgage life insurance may not be consolidated pursuant to this Section.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1106 DISCLOSURE REQUIREMENTS

In conjunction with any offer of new coverage made in any consolidation, the new insurer shall disclose in writing to each debtor the following:

- (1) That the insured may have the right to continue or convert his old coverage by paying premium directly to the old insurer;

- (2) That the new coverage is not conditioned upon either the termination or replacement of the old coverage;
- (3) The name and address of the old and new insurer;
- (4) The effective date of the new coverage;
- (5) The beneficiary of the new coverage;
- (6) Amount of coverage for both the new and old plans. If the amount of coverage for the old plan is not known, a statement that the amount may be scheduled and it may be less than or greater than the amount of the loan and the insured should check his old policy schedule for an exact amount of coverage;
- (7) Material differences, if any, between the new plan and the old plan;
- (8) A statement as to whether the old plan was an individual or group plan and a statement as to whether the new plan is an individual or a group policy.
- (9) Cautionary language shall be affixed in sticker form in bold type upon the face or insert page of any policy/certificate issued under the new plan with language substantially as follows:

IMPORTANT NOTICE

This certificate/policy is issued to you in connection with a mortgage insurance consolidation. It is the intention of the insurer to provide you coverage that is equal to or better than the coverage you had before. To the extent the benefits provided or the provisions of your prior certificate/policy are more liberal than those under this certificate/policy, the provisions of your prior certificate will control. This policy/certificate shall be incontestable from its date of issue.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1107 DISABILITY INSURANCE PLANS

If the financial institution sponsors a mortgage life insurance plan and a disability insurance plan which are underwritten by the same insurer, then if the new insurer consolidates the mortgage life plan pursuant to Rule .1104 or .1105, by offering the same coverage at the old premium, then the new insurer must also consolidate the disability insurance plan at the old premium.

Statutory Authority G.S. 58-2-40; 58-2-210.

.1108 DISCLOSURE OF CONSOLIDATION TO THE DEPARTMENT OF INSURANCE

(a) Except for loan transfer consolidations, the new insurer shall notify the North Carolina Department of Insurance of the intent to execute a mortgage insurance consolidation involving North Carolina financial institutions at least 30 days prior to the proposed effective date of the new coverage.

(b) If the consolidation is pursuant to a loan transfer, the Department of Insurance shall be notified as soon as reasonably possible, but no later than 60 days past the date of the loan transfer. Direct such notification to:

North Carolina Department of Insurance
Life and Health Division
Post Office Box 26387
Raleigh, NC 27611

Statutory Authority G.S. 58-2-40; 58-2-210.

SECTION .1200 - ACCELERATED BENEFITS

.1201 PURPOSE

The purpose of this Regulation is to regulate accelerated benefit provisions of individual and group life insurance policies and annuities and to provide required standards of disclosure. This Regulation shall apply to all accelerated benefits provisions of individual and group life insurance policies and annuities except those subject to the Long-Term Care Insurance Act, issued or delivered in this state; for or after the effective date of this Regulation.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1202 DEFINITIONS

(a) "Accelerated benefits" covered under this Regulation are benefits payable under a life insurance or annuity contract:

- (1) To a policyowner or certificateholder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and
- (2) Which reduce the death benefit otherwise payable under the life insurance or annuity contract; and
- (3) Which are payable upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of acceleration.

(b) "Qualifying event" shall mean one or more of the following:

- (1) A medical condition which a duly licensed health care provider predicts would result

in a drastically limited life span as specified in the contract, for example, 24 months or less; or

- (2) A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die; or
- (3) Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life; or
- (4) A medical condition which medical evidence indicates would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, but are not limited to, one or more of the following:
 - (A) Coronary artery disease resulting in an acute infarction or requiring surgery;
 - (B) Permanent neurological deficit resulting from cerebral vascular accident;
 - (C) End stage renal failure;
 - (D) Acquired Immune Deficiency Syndrome; or
 - (E) Other medical conditions which the Commissioner shall approve for any particular filing; or
- (5) Other qualifying events which the Commissioner shall approve for any particular filing.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1203 TYPE OF PRODUCT

Accelerated benefit riders and life insurance policies and annuities with accelerated benefit provisions are primarily mortality risks rather than morbidity risks.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1204 ASSIGNEE/BENEFICIARY

Prior to the payment of the accelerated benefit, the insurer is required to obtain from any assignee or irrevocable beneficiary a signed acknowledgment of concurrence for payout. If the insurer making the accelerated benefit is itself the assignee under the policy, no such acknowledgement is required.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1205 CRITERIA FOR PAYMENT

(a) **Lump Sum Settlement Option Required.** Contract payment options shall include the option to take the benefit as a lump sum. The benefit shall not be made available as an annuity contingent upon the life of the insured.

(b) **Restrictions on Use of Proceeds.** No restrictions are permitted on the use of the proceeds.

(c) **Accidental Death Benefit Provisions.** If any death benefit remains after payment of an accelerated benefit, the accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1206 DISCLOSURES

(a) **Descriptive Title.** The terminology "accelerated benefit" shall be included in the descriptive title printed on the first page of the policy or rider. Products regulated under this Regulation shall not be described or marketed as long-term care insurance or as providing long-term care benefits.

(b) **Tax Consequences.** A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed by a sticker or printed on the first page of the policy or rider and any other related documents. The suggested disclosure statement, to be printed in red bold face type the size of which shall not be less than 14 point, is:

BENEFITS PAID UNDER THIS [POLICY/RIDER] MAY BE TAXABLE. IF SO, YOU OR YOUR BENEFICIARY MAY INCUR A TAX OBLIGATION. AS WITH ALL TAX MATTERS, YOU SHOULD CONSULT YOUR PERSONAL TAX ADVISOR TO ASSESS THE IMPACT OF THIS BENEFIT. BENEFITS OF THIS [POLICY/RIDER] ARE NOT PAYABLE IF THE POLICY TO WHICH IT IS ATTACHED IS NOT IN-FORCE.

(c) **Solicitation:**

(I) A written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering

payment of the benefits shall be given to the applicant. The description shall include an explanation of any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens:

(A) In the case of agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgement of the disclosure shall be signed by the applicant and writing agent.

(B) In the case of a solicitation by direct response methods, the insurer shall incorporate the disclosure in the application or attach a disclosure form thereto.

(C) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(2) If there is a premium or cost of insurance charge, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens:

(A) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application.

(B) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered.

(C) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(3) **Disclosure of Premium Charge:**

(A) Insurers with financing options other than as described in Rule .1210(a)(2) of this Section shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. These insurers shall make a reasonable effort to assure that the certificateholder is aware of any additional premium or cost of insurance charge if the certificateholder is required to pay such charge.

(B) Insurers shall furnish an actuarial demonstration to the state insurance department when filing the product disclosing

the method of arriving at their cost for the accelerated benefit.

- (4) **Disclosure of Administrative Expense Charge.** The insurer shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any administrative expense charge if the certificateholder is required to pay such charge.

(d) **Effect of the Benefit Payment.** When a policyowner or certificateholder requests an acceleration, the insurer shall send a statement to the policyowner or certificateholder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. The statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlement. In addition, receipt of an accelerated benefit payment may be taxable and assistance should be sought from a personal tax advisor. Each time an accelerated benefit option is exercised the policyowner and certificateholder shall be given an endorsement, rider or schedule page which reflects any revisions to cash values, death benefits, accumulation accounts, premiums, policy loans, policy liens and any other values that change as a result of the payment or payments. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificateholder and irrevocable beneficiary. When the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder or notify the certificateholder under a group policy to reflect any new, reduced in-force face amount of the contract.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1207 EFFECTIVE DATE OF THE ACCELERATED BENEFITS

The accelerated benefit provision shall be effective for accidents on the effective date of the policy or rider. The accelerated benefit provision shall be effective for illness no more than 30 days following the effective date of the policy or rider.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1208 WAIVER OF PREMIUMS

The insurer may offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1209 DISCRIMINATION

Insurers shall not unfairly discriminate among insureds with different or similar qualifying events covered under the policy. Insurers shall not apply any additional conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1210 ACTUARIAL STANDARDS

(a) Financing Options:

- (1) The insurer may require a premium charge or cost of insurance charge for the accelerated benefit. These charges shall be based on sound actuarial principles. In the case of group insurance, the additional cost may also be reflected in the experience rating.
- (2) The insurer may pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:
 - (A) The current yield on 90 day treasury bills; or
 - (B) The current maximum statutory adjustable policy loan interest rate.
- (3) The insurer may accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:
 - (A) The current yield on 90 day treasury bills; or
 - (B) The current maximum statutory adjustable policy loan interest rate.

The interest rate on the portion of the lien which is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

(b) Effect on Cash Value:

- (1) Except as provided in Subparagraph (b)(2) of this Rule, when an accelerated benefit is payable, there shall be no more than a pro rata reduction in the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment.
- (2) Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums and any accrued interest can be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the liens. Future access to additional policy loans could also be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

(c) Effect of Any Outstanding Policy Loans on Accelerated Death Benefit Payment. When payment of an accelerated benefit results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

.1211 ACTUARIAL DISCLOSURE AND RESERVES

(a) Actuarial Memorandum. A qualified actuary should describe the accelerated benefits, the risks, the expected costs and the calculation of statutory reserves in an actuarial memorandum accompanying each filing with the Commissioner. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the Commissioner or a designee upon request.

(b) Reserves:

- (1) When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with the Standard Valuation Law. All valuation assumptions used in constructing the reserves

shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. Mortality tables and interest rates currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. The actuary must follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover:

- (A) Policies upon which no claim has yet arisen.
- (B) Policies upon which an accelerated claim has arisen.
- (2) For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.
- (3) Policy liens and policy loans, including accrued interest, represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability such excess must be held as a non-admitted asset.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-7-15(1); 58-58-1.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0305.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 7:00 p.m. on September 17, 1991 at the County Courthouse - 2nd Floor, Courtroom 2, 403 West King Street, Boone, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact

PROPOSED RULES

Suzanne H. Keen, Division of Environmental Management, P. O. Box 29535, Raleigh, NC 27626-0535, 919-733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0305 WATAUGA RIVER BASIN

(c) The Watauga River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) October 1, 1987;
- (4) August 1, 1989;
- (5) August 1, 1990;
- (6) December 1, 1990;
- (7) April 1, 1992.

(f) The Schedule of Classifications and Water Quality Standards for the Watauga River Basin was amended effective April 1, 1992 with the reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0309.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 7:00 p.m. on September 16, 1991 at the Elkin Recre-

ation Center, Highway 268 West, Elkin, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Suzanne H. Keen, Division of Environmental Management, P. O. Box 29535, Raleigh, NC 27626-0535, 919-733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0309 YADKIN-PEE DEE RIVER BASIN

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) April 1, 1992.

(g) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

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 10
DEPARTMENT OF HUMAN RESOURCES

CHAPTER 45
COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

.0201 DEFINITIONS

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

- (7) The term anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:
- (a) Boldenone;
 - (b) Chlorotestosterone (4-chlortestosterone);
 - (c) Clostebol;
 - (d) Dehydrochlormethyltestosterone;
 - (e) Dihydrotestosterone (4-dihydrotestosterone);
 - (f) Drostanolone;
 - (g) Ethylestrenol;
 - (h) Fluoxymesterone;
 - (i) Formebolone (formebolone);
 - (j) Mesterolone;
 - (k) Methandienone;
 - (l) Methandranone;
 - (m) Methandriol;
 - (n) Methandrostenolone;
 - (o) Methenolone;
 - (p) Methyltestosterone;
 - (q) Mibolerone;
 - (r) Nandrolone;
 - (s) Norethandrolone;
 - (t) Oxandrolone;
 - (u) Oxymesterone;

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(v) Oxymetnolone;

(w) Stanolone;

(x) Stanozolol;

(y) Testolactone;

(z) Testosterone;

(aa) Trenbolone; and

(bb) Any salt, ester, or isomer of a drug or substance described or listed in this Paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other non-human species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this Paragraph.

(8) ~~(7)~~ Any term not defined in this Rule shall have the definition set forth in General Statute 90-87.

History Note: Statutory Authority G.S. 90-88;

Eff. June 30, 1978;

Amended Eff. August 1, 1991; May 1, 1990.

.0203 SCHEDULE II

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital	2125
(2) Glutethimide	2250
(3) (2) Pentobarbital	2270
(4) (3) Secobarbital	2315

History Note: Statutory Authority G.S. 90-88; 90-90; 143B-147;

Eff. June 30, 1978;

Amended Eff. August 1, 1991; August 1, 1989; July 1, 1989; December 1, 1987.

.0204 SCHEDULE III

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(5) <u>Glutethimide</u>	2550
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(f) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

<u>Anabolic Steroids</u>	4000
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History Note: Statutory Authority G.S. 90-88; 90-91; 143B-147;

Eff. June 30, 1978;

Amended Eff. August 1, 1991; December 1, 1987; August 1, 1987; July 1, 1982.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

JULY 1991

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF ADMINISTRATION</u>			
1	NCAC	4G .0212	Amended
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC	20B .0403	Repealed
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	3C .0110	Amended
		.0201	Amended
		.1601	Amended
		18 .0309	** Adopted
<u>OFFICES OF THE GOVERNOR/LIEUTENANT GOVERNOR</u>			
9	NCAC	2B Executive Order Number 142 Eff. May 1, 1991 Executive Order Number 143 Eff. May 1, 1991 Executive Order Number 144 Eff. May 3, 1991 Executive Order Number 145 Eff. May 30, 1991	
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC	3R .0320	Adopted
		.2002	** Amended
		20F .0101 - .0105	Transferred and Recodified to 10 NCAC 23D .0101 - .0105 Eff. May 31, 1991
		.0201 - .0202	Transferred and Recodified to 10 NCAC 23D .0201 - .0202 Eff. May 31, 1991
		.0301 - .0305	Transferred and Recodified to 10 NCAC 23E .0101 - .0105 Eff. May 31, 1991
		.0401 - .0418	Transferred and Recodified to 10 NCAC 23E .0201 - .0218 Eff. May 31, 1991
		.0501 - .0510	Transferred and Recodified to 10 NCAC 23E .0301 - .0310 Eff. May 31, 1991
		23A .0601 - .0602	Recodified from 10 NCAC 23B .0101 - .0102 Eff. May 31, 1991
		.0701 - .0704	Recodified from

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			10 NCAC 23B .0401 - .0404
			Eff. May 31, 1991
		.0705 - .0707	Recodified from
			10 NCAC 23B .0406 - .0408
			Eff. May 31, 1991
	23B	.0101 - .0102	Recodified to
			10 NCAC 23A .0601 - .0602
			Eff. May 31, 1991
		.0401 - .0404	Recodified to
			10 NCAC 23A .0701 - .0704
			Eff. May 31, 1991
		.0406 - .0408	Recodified to
			10 NCAC 23A .0705 - .0707
			Eff. May 31, 1991
	23D	.0101 - .0105	Transferred and Recodified
			from 10 NCAC 20F .0101 - .0105
			Eff. May 31, 1991
		.0201 - .0202	Transferred and Recodified
			from 10 NCAC 20F .0201 - .0202
			Eff. May 31, 1991
	23E	.0101 - .0105	Transferred and Recodified
			from 10 NCAC 20F .0301 - .0305
			Eff. May 31, 1991
		.0201 - .0218	Transferred and Recodified
			from 10 NCAC 20F .0401 - .0418
			Eff. May 31, 1991
		.0301 - .0310	Transferred and Recodified
			from 10 NCAC 20F .0501 - .0510
			Eff. May 31, 1991
	24A	.0306	** Amended
	35E	.0104	** Amended
	35F	.0002	** Amended
	41H	.0405	Amended
		.0407	** Amended
		.0408	Amended
		.0501	Amended
		.0502	** Amended
		.0601 - .0602	** Adopted
		.0603	Adopted
		.0604	** Adopted
	42W	.0005	Repealed
	46H	.0109	** Adopted
	50B	.0101 - .0102	Amended

DEPARTMENT OF JUSTICE

12	NCAC	9B	.0228	Amended
			.0301	** Amended
			.0302	Amended
			.0303 - .0304	** Amended
			.0305	Amended
			.0306	** Amended

DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A	NCAC	11	.0503	Repealed
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DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

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15A	NCAC	2B .0312	Amended Eff. August 1, 1991
		.0313	** Amended
		.0315	** Amended
	2D	.0524 - .0525	** Amended
		.0901	Amended
		.0903	Amended
		.0912	Amended
		.0917 - .0924	Amended
		.0934	Amended
	7H	.0208	Amended
	7J	.0409	Amended
	9C	.1007	Temp. Adopted Expires 11-27-91
	10B	.0109	Amended
		.0114	Amended
		.0202	Amended
		.0203	** Amended
		.0209	** Amended
		.0215	** Amended
	10C	.0103	** Amended
		.0203	** Amended
		.0205	** Amended
		.0304 - .0305	** Amended
		.0407	Amended
	10D	.0002	Amended
		.0003 - .0004	** Amended
	10E	.0004	Amended
	16A	.0804	* Correction
	18A	.2616	** Amended
		.2618	** Amended
		.2711	** Amended
		.2724	* Correction
		.2801	** Adopted
		.2802	Adopted
		.2803 - .2806	** Adopted
		.2807	Adopted
		.2808 - .2810	** Adopted
		.2811	Adopted
		.2812 - .2813	** Adopted
		.2814	Adopted
		.2815	** Adopted
		.2816	Adopted
		.2817 - .2819	** Adopted
		.2820	Adopted
		.2821	** Adopted
		.2822	Adopted
		.2823 - .2826	** Adopted
		.2827 - .2829	Adopted
		.2830	** Adopted
		.2831 - .2833	Adopted
		.2834	** Adopted
		.2835	Adopted
	18D	.0201	** Amended
		.0206	Adopted
	19A	.0102	* Correction

DEPARTMENT OF REVENUE

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17	NCAC	6B	.0117	Amended
			.3503	Amended
			.3527	Adopted
		11	.0103	* Correction

BOARD OF ARCHITECTURE

21	NCAC	2	.0302	** Amended
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BOARD OF MEDICAL EXAMINERS

21	NCAC	32L	.0001	Amended
			.0005	Amended
			.0009	Amended

BOARD OF MORTUARY SCIENCE

21	NCAC	34	.0101 -.0122	Recodified to 21 NCAC 34A .0101 - .0122 Eff. February 7, 1991
			.0123	Recodified to 21 NCAC 34A .0201 Eff. February 7, 1991
			.0124	Recodified to 21 NCAC 34A .0123 Eff. February 7, 1991
			.0125	Recodified to 21 NCAC 34A .0202 Eff. February 7, 1991
			.0126	Recodified to 21 NCAC 34A .0124 Eff. February 7, 1991
			.0201 - .0225	Recodified to 21 NCAC 34B .0101 - .0125 Eff. February 7, 1991
			.0301 - .0311	Recodified to 21 NCAC 34B .0201 - .0211 Eff. February 7, 1991
			.0401 - .0409	Recodified to 21 NCAC 34B .0301 - .0309 Eff. February 7, 1991
			.0501 - .0505	Recodified to 21 NCAC 34B .0401 - .0405 Eff. February 7, 1991
			.0601 - .0610	Recodified to 21 NCAC 34B .0501 - .0510 Eff. February 7, 1991
			.0701 - .0715	Recodified to 21 NCAC 34B .0601 - .0615 Eff. February 7, 1991
			.0801 - .0805	Recodified to 21 NCAC 34B .0701 - .0705 Eff. February 7, 1991
		34A	.0101	Amended
			.0102	** Amended
			.0103	Amended
			.0104	** Amended
			.0123	Amended
			.0201	** Amended

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		.0203	Amended
34B		.0612	Amended
		.0703	Amended
34C		.0101 - .0105	Adopted
		.0201 - .0203	** Adopted
		.0204 - .0206	Adopted
		.0301 - .0306	Adopted

BOARD OF OPTICIANS

21	NCAC	40	.0205	Amended
			.0206	** Amended
			.0307	Amended
			.0314	** Amended
			.0319	** Amended

EXAMINERS OF PLUMBING AND HEATING CONTRACTORS

21	NCAC	50	.0105	Amended
			.0301	Amended
			.0309	Amended
			.0404	Amended
			.0407	Amended
			.0411	Amended
			.0505	Amended
			.1102	Amended

REAL ESTATE COMMISSION

21	NCAC	58C	.0302	Temp. Amended
				Expires 10-02-91
			.0501	Adopted
			.0502 - .0507	** Adopted
			.0508 - .0510	Adopted
			.0511	** Adopted
			.0512	Adopted
		58D	.0201	Temp. Amended
				Expires 10-02-91
			.0204	** Amended
			.0206	** Amended
			.0501	Amended

OFFICE OF STATE PERSONNEL

25	NCAC	1D	.1126	Amended
		1E	.1305	Amended
		1O	.0201 - .0203	** Amended
			.0303 - .0304	** Amended
			.0305	Repealed

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).

ADMINISTRATION

Auxiliary Services

<i>1 NCAC 4G .0212 - Telefax and Telegraph Proposals</i>	<i>ARRC Objection 5/16/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 5/16/91</i>

AGRICULTURE

Plant Industry

<i>2 NCAC 48F .0306 - Collection and Sale of Venus Flytrap</i>	<i>ARRC Objection 4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 4/18/91</i>

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

<i>4 NCAC 3G .0203 - Expiration and Renewal</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 4/18/91</i>
<i>4 NCAC 3G .0502 - Annual Report</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 4/18/91</i>
<i>4 NCAC 3G .0601 - Revocation or Suspension; Hearings</i>	<i>ARRC Objection 3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 4/18/91</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>
<i>Agency Revised Rule</i>	<i>ARRC Objection 4/18/91</i>
	<i>Obj. Removed 5/16/91</i>

EDUCATION

Elementary and Secondary Education

<i>16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans</i>	<i>ARRC Objection 6/21/91</i>
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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>Agency Responded</i>	<i>No Action 3/21/91</i>
<i>No Response from Agency</i>	<i>No Action 4/18/91</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>
<i>Agency Responded</i>	<i>No Action 3/21/91</i>
<i>No Response from Agency</i>	<i>No Action 4/18/91</i>

ARRC OBJECTIONS

Coastal Management

15A NCAC 7J .0409 - Civil Penalties	ARRC Objection	1/18/91
Agency Returned Rule Unchanged	No Action	2/25/91
Rule Returned to Agency	No Action	4/18/91
Agency Filed Rule with OAH	Rule Eff.	6/1/91

Environmental Health

15A NCAC 18A .2537 - Appeals	ARRC Objection	3/21/91
Agency Responded	No Action	4/18/91
Agency Withdrew Rule		5/16/91
15A NCAC 18A .2616 - Requirements for Employees	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	5/16/91
15A NCAC 18A .2618 - Cleaning of Equipment and Utensils	ARRC Objection	3/21/91
Agency Responded	No Action	4/18/91
Agency Revised Rule	Obj. Removed	5/16/91
15A NCAC 18A .2711 - Toilet Facilities	ARRC Objection	3/21/91
Agency Responded	No Action	4/18/91
Agency Revised Rule	Obj. Removed	5/16/91

HUMAN RESOURCES

Facility Services

10 NCAC 3C .0914 - Defs Applicable Psychiatric Substance Abuse Svcs	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3J .2401 - Requirement for Operations Manual	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .0102 - Definitions	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .0603 - Home Health Aide Services	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .1101 - Administration	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .1112 - Design and Construction	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .1114 - Plumbing	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91
10 NCAC 3T .1206 - Hospice Inpatient Fire and Safety Requirements	ARRC Objection	4/18/91
Agency Revised Rule	Obj. Removed	4/18/91

Individual and Family Support

10 NCAC 42B .1201 - Personnel Requirements	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2001 - Qualifications of Administrator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91

ARRC OBJECTIONS

<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .2006 - Qualifications of Activities Coordinator</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>3/21/91</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .3301 - Existing Building</i>	<i>ARRC Objection</i>	<i>11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>12/20/90</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>5/01/91</i>
<i>10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator</i>	<i>ARRC Objection</i>	<i>11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>12/20/90</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>5/01/91</i>

Social Services

<i>10 NCAC 24A .0303 - Sel/County Board Members/Social Svcs Comm</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0202 - Conciliation Procedure</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0408 - Participation Expenses</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0409 - One-Time Work Related Expenses</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0411 - Supportive Svcs//Available in Non-JOBs Counties</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

JUSTICE

NC Criminal Justice Education

<i>12 NCAC 9B .0301 - Certification of Instructors</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>5/16/91</i>
<i>12 NCAC 9B .0302 - General Instructor Certification</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

LABOR

Migrant Housing

<i>13 NCAC 16 .0201 - Conduct of Preoccupancy Inspections</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0301 - Provisional Occupancy</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0302 - Provisional Occupancy Denied</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0303 - Inspection of Provisionally Occupied Housing</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

LICENSING BOARDS AND COMMISSIONS

Auctioneer's Commission

<i>21 NCAC 4B .0602 - Advertising</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

ARRC OBJECTIONS

Cosmetic Art Examiners

21 NCAC 14F .0010 - Sanitary Rules	ARRC Objection	5/16/91
21 NCAC 14G .0017 - Changes in Teaching Staff	ARRC Objection	5/16/91
21 NCAC 14I .0302 - Library	ARRC Objection	2/25/91
Agency Responded	No Action	3/21/91
Agency Revised Rule	Obj. Removed	4/18/91
21 NCAC 14I .0304 - Classroom Work	ARRC Objection	5/16/91
21 NCAC 14L .0210 - Effect on Student-Teacher Ratio	ARRC Objection	2/25/91
Agency Responded	No Action	3/21/91
Agency Revised Rule	Obj. Removed	4/18/91

Dental Examiners

21 NCAC 16C .0310 - Reexamination	ARRC Objection	3/21/91
Agency Withdrew Rule		4/18/91
21 NCAC 16D .0101 - Eligibility Requirements	ARRC Objection	3/21/91
Agency Revised Rule	Obj. Removed	4/18/91

Medical Examiners

21 NCAC 32B .0309 - Personal Interview	ARRC Objection	2/25/91
Agency Responded	No Action	3/21/91
Rule Returned to Agency		5/16/91

Mortuary Science

21 NCAC 34C .0102 - Applicability of Statutes	ARRC Objection	5/16/91
Agency Withdrew Rule		5/16/91

STATE PERSONNEL

25 NCAC 1D .0509 - Severance Salary Continuation	ARRC Objection	1/18/91
Agency's Response Unacceptable		2/25/91
Rule Returned to Agency		4/18/91

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. 456, 402 S.E.2d 556 (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. 411, 402 S.E.2d 447 (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.

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5	Correction	Chiropractic Examiners	10
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- AG - Attorney General's Opinions
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- FR - Final Rule
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