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NORTH CAROLINA REGISTER

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July 3, 1995

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Acupuncture Licensing Board
Agriculture
Community Colleges
Environment, Health, and Natural Resources
Human Resources
Justice
Public Education
State Personnel
Tax Review Board
RRC Objections
Contested Case Decisions

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 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 twenty dollars ($120.00) for 24 issues Individual issues may be purchased for ten dollars ($10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

(1) Single pages may be obtained at a minimum cost of two dollars and 50 cents ($2.50) for 10 pages or less, plus fifteen cents ($0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

(2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **10:01 NCR 1-67, April 3, 1995** refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

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NORTH CAROLINA REGISTER
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Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing *15 days from notice*	* End of Required Comment Period *30 days from notice*	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* *An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

** *The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

EXECUTIVE ORDER NO. 79
RESCINDING THE CENTER FOR THE PREVENTION OF SCHOOL VIOLENCE

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

Executive Order No. 19, signed June 30, 1993, is hereby rescinded. The Center for the Prevention of School Violence created by that Order is hereby transferred to the Board of Governors of the University of North Carolina.

This Order is effective immediately.

Done in Raleigh, North Carolina, this the 7th day of June, 1995.

EXECUTIVE ORDER NO. 80
AMENDING THE NORTH CAROLINA ALLIANCE FOR COMPETITIVE TECHNOLOGIES (NCACTS)

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

Section 5 of Executive Order 63 is hereby amended to read:

Section 5. Board of Directors.

A. The Alliance shall have a Board of Directors of 22 persons appointed by the Governor from among the public and private sectors with a majority of members being from the private sector. The Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate are requested to nominate two members each, one of each party, to serve terms concurrent with their terms of office. The Governor shall appoint their nominees. Six directors shall be appointed from educational institutions, government, and non-profit institutions. Twelve directors shall be appointed from private sector industry and technology fields, including but not limited to, pharmaceuticals and chemicals, environmental resources, food processing, furniture, information technologies, metals, paper, polymers, textiles, transportation and wood products. All initial directors, except the Chair and legislative directors, shall serve a one-year term and until their successors are appointed. Thereafter, terms shall be staggered. One third of the directors shall have one-year terms; one third, two-year terms; and one third, three-year terms. Directors appointed or reappointed thereafter shall serve three-year terms.

B. The Governor shall appoint the Chair of the Board of Directors to serve an initial three-year term.

C. Responsibilities of the Board of Directors shall be advisory in nature to the Governor and the General Assembly. Their duties shall include:

1. Approval of policies, regulations, and by-laws that are necessary to form and operate the organization;

2. Oversight of the policies and plans of the Alliance, including the strategic plan, studies of needs, gaps in service delivery, and performance standards;

3. Implementation of procedures to insure cooperation with other parts of State government;

4. Adoption of a proposal for staffing the Alliance;

5. Approval of an operating plan for the Alliance; and

6. Identification of other activities and priorities that should be undertaken by the Alliance.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 13th day of June, 1995.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF: The Proposed Assessment of additional sales and use tax for the period of November 1, 1989 through December 31, 1992 assessed against **Culp, Inc.**	)))))))	**ADMINISTRATIVE** **DECISION NUMBER: 299**

THIS MATTER was heard before the Tax Review Board on April 11, 1995 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Culp, Inc., (hereinafter "Petitioner") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Hearings (hereinafter "Assistant Secretary") entered on August 11, 1994 sustaining a proposed assessment of sales and use tax for the period of November 1, 1989 through December 31, 1992.

Chairman Harlan E. Boyles presided over the bearing with Hugh Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Joseph D. Joyner, Jr. and Martin H. Brinkley, Attorneys at Law, appeared on behalf of the Petitioner; Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

FINDINGS OF FACT

THE TAX REVIEW BOARD, having reviewed the Petition, supporting brief and record filed in this matter, makes the following Findings of Fact:

1. The Petitioner is a fully integrated manufacturer and marketer of fabrics for the furniture, bedding and institutional furnishings industries.

2. In the manufacturing process, a pattern and color are printed onto highly specialized greige paper.

3. The Petitioner prints upholstery fabrics and mattress tickings by passing the printed (greige) paper and the base cloth through a rotary screen heat transfer printing machine that unites the paper and cloth.

4. The greige paper can be used only once in this process and must be discarded after use.

CONCLUSIONS OF LAW

Based upon the record, the Petition and supporting brief and the foregoing findings of fact, the Tax Review Board concludes as a matter of law:

1. Sales of mill machinery, mill machinery parts and accessories to manufacturing industries and plants for industrial processing are subject to a one percent (1%) use tax in North Carolina under G.S. § 105-164.4(a)(1d)b.

2. An exemption from the sales or use tax is allowed under G.S. § 105-164.13(8) for "sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured."

3. The Assistant Secretary erred in ruling that the greige paper does not meet the exemption provided under G.S. § 105-164.13(8). The greige paper qualifies for the exemption under this statutory provision because the Board

concludes that the paper is deemed to "enter into" the manufactured fabric based upon the following unique facts presented in the record: (1). the greige paper can only be used once in the heat transfer printing process; (2). the greige paper comes into direct, face-to-face contact with the fabric; (3). the greige paper has a one-to-one relationship with the fabric; (4). the greige paper is indispensable in the heat transfer printing process.

4. The Sales and Use Tax Administrative Rule, cited as 17 N.C.A.C. 07B .0705(j), provides that "sales to manufacturers of fabric conditioners and other chemicals which actually enter into manufactured products at some step between the initial and final steps in the manufacturing process are exempt from tax." The Board further concludes that the greige paper falls within the category of products exempt pursuant to this Rule.

DECISION

IT APPEARING TO THE BOARD, that the greige paper purchased by the Petitioner and used in its manufacturing process qualifies for exemption from sales or use tax imposed under G.S. § 105-164.4(a).

IT IS THEREFORE ORDERED, that the Final Decision of the Assistant Secretary is **REVERSED**.

Entered this the 9th day of June, 1995.

TAX REVIEW BOARD

_____
Harlan E. Boyles, Chairman
State Treasurer

_____
Hugh Wells
Chairman of the Utilities Commission

_____
Jeff D. Batts, Appointed Member

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Structural Pest Control Committee intends to amend rule cited as 2 NCAC 34 .0904.

Temporary: *This Rule was filed as a temporary rule effective July 10, 1995 for a period of 120 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *November 1, 1995.*

A Public Hearing *will be conducted at 10:00 a.m. on August 29, 1995 at the Board Room, (Room 359), Agriculture Building, 2 W. Edenton St., Raleigh, NC 27601.*

Reason for Proposed Action: *To prohibit the use of unregistered pesticides.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing or prior to the hearing by mail, addressed to the Chairman of the North Carolina Structural Pest Control Committee, P.O. Box 27647, Raleigh, NC 27611.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 34 -STRUCTURAL PEST CONTROL DIVISION

SECTION .0900 - DUTIES AND RESPONSIBILITIES OF LICENSEE

.0904 PROHIBITED ACTS

(a) No reference shall be made by any certified applicator, licensee, business establishment or business entity in any form of advertising that would indicate approval, endorsement or recommendation by the committee, or by any agency of the federal government or North Carolina State, county, or city government.

(b) The use of a structural pest control license(s), certified applicator's identification card(s), registered technician's identification card(s) or licensee identification card(s) for any purpose other than identification is prohibited.

(c) In solicitation of structural pest control business, no licensee or his employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection and/or treatment is required for a specific structure.

(d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any phase(s) of work for which he does not hold a valid license(s) as provided for under G.S. 106-65.25(a), unless said licensee shall hold a valid certified applicator's identification card or registered technician's identification card, as provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license(s) covering phases of structural pest control work advertised.

(e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is prohibited.

(f) No licensee, certified applicator or registered technician's identification card holder shall advertise or hold himself out in any manner in connection with the practice of structural pest control as an entomologist, plant pathologist, horticulturist, public health engineer, sanitarian, and the like, unless such person shall be qualified in such field(s) by required professional and educational standards for the title used.

(g) No certified applicator, licensee or his employees shall represent to any property owner or his authorized agent or occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, unless strongly supporting visible evidence of such infestation exists.

(h) No certified applicator or licensee or their employees shall authorize, direct, assist, or aid in the publication, advertisement, distribution, or circulation of any material by false statement or representation concerning the licensee's structural pest control business or business of the company with which he is employed.

(i) No certified applicator or licensee or their employees shall advertise or contract in a company name style contradictory to that shown on the certified applicator's identification card or license certificate.

(j) No certified applicator shall use any name style on his certified applicator's identification which contains the words "exterminating", "pest control" or any other words which imply that he provides pest control services for a valuable consideration unless he is a licensee or a duly authorized agent or employee of a licensee.

(k) No licensee issued an inactive license shall engage in any phase of structural pest control.

(l) No certified applicator or licensee or their employees shall apply any substance containing a boron compound within a structure unless it is an EPA registered pesticide.

Statutory Authority G.S. 106-65.29.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services; and the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules cited as 10 NCAC 14V .0101-.0104, .0201-.0208, .0301-.0304, .0401-.0405, .0501-.0505, .0601-

.0604, .0701-.0712, .0801-.0805, .1101-.1103, .1201-.1203, .1301-.1303, .1401-.1403, 1501-1504, .2101-.2104, .2201-.2204, .2301-.2306, .2401-.2404, .2501-.2505, .3101-.3103, .3201-.3203, .3301-.3303, .3401-.3403, .3501-.3503, .3601-.3604, .3701-.3703, .3801-.3803, .3901-.3903, .4001-.4003, .4101-.4104, .5001-.5002, .5101-.5104, .5201-.5204, .5301-.5303, .5401-.5403, .5501-.5503, .5601-.5603, .5701-.5703, .5801-.5804, .5901-.5903, .6001-.6003, .6101-.6103, .6201-.6202, .6301-.6303, .6401-.6403, .6501-.6503, .6601-.6603, .6701-.6702, .6801-.6802, .6901-.6903 and repeal 10 NCAC 14B .0501-.0503, .0505-.0509; 14K .0101-.0103, .0201-.0219, .0301-.0310, .0312-.0315, .0317-.0324, .0326-.0329, .0333-.0348, .0350-.0365, .0401-.0408; 14L .0101-.0106, .0201-.0203, .0301-.0308, .0310, .0401-.0407, .0601-.0606, .0609, .0611-.0615, .0701-.0709, .0711-.0712; 14M .0101-.0113, .0501-.0511, .0601-.0602, .0604, .0606, .0608-.0612, .0614-.0615, .0617-.0621, 0701-.0716; 14N .0101-.0107, .0201-.0207, .0301-.0307, .0401-.0406, .0501-.0507, .0701, .0703-.0705, .0801-.0811; 14O .0301-.0314, .0401-.0409, .0411-.0416, .0501-.0505, .0601-.0609, .0611-.0615, .0617-.0618, .0701-.0710; 18A .0124-.0128, .0130, .0132-.0133, .0135-.0136; 18I .0114-.0120; 18J .0110-.0119, .0212-.0213, .0304-.0311, .0601-.0604, .0701-.0715, .0801-.0805; 18K .0109-.0116; 18L .0107-.0108, .0223-.0224, .0331-.0336, .0338-.0339, .0428-.0434, .0504, .0511, .0513, .0701-.0705, .0707, .0801, .0803-.0809, .0901-.0904, .1001-.1006, .1101-.1103, .1105-.1107, .1201, .1203-.1206, .1301-.1309, .1401-.1403, .1501-.1525; 18M .0107-.0110, .0206-.0213, .0304-.0307, .0406-.0409, .0505-0506, .0607-.0608, .0701, .0703-.0706, .0708-.0714, .0801-.0803, .0817-.0819, .0824-.0838, .0901-.0908, .1001-.1009, .1101-.1106, .1203-.1204, .1302-.1305, .1401-.1403, .1405-.1410; 18N .0105-.0110, .0204-.0212, .0305-.0306; 18P .0901-.0903, .1001-.1004; 18Q .0284, .0286-.0287, .0520-.0521, .0538-.0552.

Proposed Effective Date: *May 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on August 7, 1995 at the BrownEstone Hotel, 1707 Hillsborough Street, Raleigh, NC 27605, (Phone: 919-828-0811).*

Reason for Proposed Action: *To better clarify requirements for facilities that provide services to individuals with mental illness, developmental disabilities, and substance abuse disorders; and collapse a large number of Rules into a more organized manner.*

Comment Procedures: *Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919-733-4774. Written comments will be accepted through August 6, 1995, and must state the Rules to which the comments are addressed. These comments should be sent to the above address. Please provide 35 copies of comments for distribution at the hearing. Time limits for oral remarks may be imposed at the hearing. Fiscal information regarding these Rules is available from the Division upon request.*

Fiscal Note: *These Rules affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14B - RULES OF PROCEDURE

SECTION .0500 - WAIVER OF COMMISSION AND DIVISION DIRECTOR RULES

.0501 PURPOSE, SCOPE AND DEFINITIONS

~~(a) Purpose. The purpose of the Rules in this Section is to specify the procedures for requesting and acting on requests for waiver of Rules adopted by the Commission or the Division Director, except for requests for waiver of licensure Rules adopted pursuant to G.S. 122C which are subject to review and action by the Division of Facility Services, in accordance with the provisions of 10 NCAC 14K .0216.~~

~~(b) Scope. These Rules apply to any person subject to Rules of the Commission or the Division Director.~~

~~(c) Definitions.~~

~~(1) "Commission" means the term as defined in G.S. 122C-3.~~

~~(2) "Division" means the term as defined in G.S. 122C-3.~~

~~(3) "Division Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.~~

~~(4) "Special waiver request" means a proposed alternative system of policy and procedures to be used in place of specified rules.~~

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0502 SUBMISSION OF REQUESTS FOR WAIVERS

~~Requests for waivers shall be sent to the Division Director, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27603.~~

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0503 CONTENTS OF WAIVER REQUESTS

~~Except as provided in Rule .0508 of this Section, waiver requests shall be in writing and shall contain:~~

~~(1) the name, address and telephone number of the~~

~~person making the request;~~

~~(2) the name, address and telephone number of the facility, program, agency or other entity for which the waiver is requested;~~

~~(3) the rule number and title of any rule for which the waiver is requested;~~

~~(4) a statement of facts including:~~

~~(a) the reason for the request;~~

~~(b) the nature and extent of the request; and~~

~~(c) documentation that the health, safety or welfare of clients will not be threatened.~~

~~(5) the time frame for which the waiver is requested; and~~

~~(6) authorization for the waiver request and the date of such authorization if from:~~

~~(a) a facility operated by an area program, area board authorization;~~

~~(b) a contract agency (of area programs) proof of recommendation by area board and proof of contract agency governing body approval;~~

~~(c) a private facility, authorization by the governing body; and~~

~~(d) the Department of Correction, Division of Prisons, authorization by the Director of the Division of Prisons.~~

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0505 PROCEDURE FOR WAIVERS BY COMMISSION

~~If any rule for which waiver is requested was adopted pursuant to the rule making authority of the Commission, the procedures set forth in this Rule shall be followed:~~

~~(1) The person requesting the waiver shall be notified regarding the time and place of the meeting at which the Commission will vote upon the waiver request. At the discretion of the Chairman of the Commission, the person requesting the waiver and any other interested person may be given the opportunity to speak regarding the waiver request.~~

~~(2) Decisions regarding waiver requests shall be based upon, but not limited to, the following:~~

~~(a) the nature and extent of the request; and~~

~~(b) safeguards to ensure that the health, safety or welfare of clients will not be threatened.~~

~~(3) The Commission's decision shall be issued in writing by the Chairman of the Commission and shall state:~~

~~(a) the factual situation giving rise to the waiver request;~~

~~(b) the decision that the waiver request was granted, or granted subject to certain conditions;~~

~~(c) the time frame, if the waiver is granted; and~~

~~(d) the reason, if the waiver request was denied.~~

~~(4) The waiver may be granted:~~

~~(a) retroactively to the date of the authorization as described in Item (6) of Rule .0503 of this Section; or~~

~~(b) to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0508 of this Section.~~

Statutory Authority G.S. 143B-147(a)(8).

.0506 WAIVERS REQUESTED BY COMMISSION

~~(a) Any member of the Commission may initiate a request for waiver of any rule adopted pursuant to the rule making authority of the Commission, or the rule making authority delegated to the Division Director by the Secretary as described in this Section.~~

~~(b) In requesting a waiver under Paragraph (a) of this Rule, and on behalf of one or more agencies or services, the Commission member is subject to Subitems (2)(a) and (b) of Rule .0508 of this Section.~~

Statutory Authority G.S. 143B-147(a)(8).

.0507 PROCEDURE FOR WAIVERS BY DIVISION DIRECTOR

~~If the rule for which waiver is requested was adopted pursuant to the rule making authority delegated to the Division Director by the Secretary, the procedures set forth in this Rule shall be followed:~~

~~(1) Decisions regarding waiver requests shall be based upon, but not limited to, the criteria as referenced in Item (2) of Rule .0505 of this Section.~~

~~(2) A decision regarding the waiver request shall be issued in writing by the Division Director within 60 days from the date of receipt of the waiver request and shall state:~~

~~(a) the factual situation giving rise to the waiver request;~~

~~(b) the reasons why the request was granted, granted subject to certain conditions, or denied; and~~

~~(c) if granted, the time frame for which the waiver is granted.~~

~~(3) The waiver may be granted retroactively to the date of the authorization of the governing body as described in Item (6) of Rule .0503 of this Section or to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0508 of this Section.~~

Statutory Authority G.S. 122C-112(a)(8).

.0508 WAIVERS REQUESTED BY DIVISION DIRECTOR

~~The Division Director:~~

~~(1) may grant a request for waiver of rules adopted pursuant to the rule making authority delegated to him by the Secretary as described in this Section; and~~

~~(2) may initiate a request for waiver of rules adopted~~

~~pursuant to the rule-making authority of the Commission as described in this Section:~~

~~(a) except when requesting a waiver on behalf of one or more agencies or services, the Division Director is exempt from the provisions of Items (2) and (6) of Rule .0503 of this Section; and~~

~~(b) instead, the Division Director shall list the types of agencies or services for which the waiver is requested.~~

Statutory Authority G.S. 122C-112(a)(8).

.0509 SPECIAL REQUESTS

~~(a) The Commission or Division Director may approve one or more lists of conditions under which an agency may make a special waiver request.~~

~~(b) In addition to all Rules of this Section, any agency making a special request for waiver of specified rules shall:~~

~~(1) address the relevant list of conditions; and~~

~~(2) obtain Division approval of the proposed alternative system of policy and procedures prior to action by either the Commission or Division Director.~~

~~(c) The Commission or Division Director may grant or deny waiver of specified rules upon receipt of an agency's special request submitted in accordance with the rules of this Section.~~

Statutory Authority G.S. 143B-147(a)(8).

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

SECTION .0100 - GENERAL INFORMATION

.0101 SCOPE

~~(a) Subchapters 14K through 14O of this Chapter set forth licensure rules for mental health, mental retardation and other developmental disabilities and substance abuse facilities. Under the provisions of G.S. 122C-23 and G.S. 122C-24, a facility shall comply with these Rules. Failure to comply with these Rules shall be grounds for the Department to deny or revoke a license.~~

~~(b) The Rules are codified in this Chapter as follows:~~

~~(1) Subchapter 14K - core rules applicable to all types of facilities licensed under the provisions of G.S. 122C, Article 2;~~

~~(2) Subchapter 14L - rules applicable to mental health facilities;~~

~~(3) Subchapter 14M - rules applicable to mental retardation and other developmental disabilities facilities;~~

~~(4) Subchapter 14N - rules applicable to substance abuse facilities; and~~

~~(5) Subchapter 14O - rules applicable to facilities serving more than one disability.~~

~~(c) When a facility contracts with a person for the provision of services, or portions of a service, the facility shall ensure that the contract services are provided in accordance with the applicable rules in this Subchapter and with 10 NCAC 14L, 14M, 14N, or 14O depending upon the type of client population served.~~

~~(d) In cases where no other specific licensure rules exist for those mental health, mental retardation and other developmental disabilities or substance abuse facilities, found in division publication APSM 100-1, "Service Definitions for Area Program Components", the core rules contained in this Subchapter shall apply. These referenced rules have been adopted in accordance with G.S. 150B-14(e).~~

Statutory Authority G.S. 122C-23; 122C-24; 122C-26; 143B-147.

.0102 COPIES OF LICENSURE RULES

~~(a) The Division of Mental Health, Mental Retardation and Substance Abuse Services (DMH/MR/SAS) shall distribute a limited number of free copies of licensure rules contained in Subchapters 14K through 14O of this Chapter to area programs for area-operated facilities and for contract agency facilities. (Additional copies may be purchased from DMH/MR/SAS at a price to cover printing and postage.)~~

~~(b) Each area program shall distribute to each of its area-operated and contract agency facilities a copy of these licensure Rules.~~

~~(c) The Division of Facility Services (DFS) shall distribute a limited number of free copies of the licensure Rules to private facilities.~~

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

.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. The criteria for alcohol abuse delineated in the 1987 edition of 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, is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

~~(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. The criteria for alcohol dependence delineated in the 1987 edition of 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 is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

~~(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 facility 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) time frame 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:~~

~~(A) have autism;~~

~~(B) are diagnosed hyperactive;~~

~~(C) have an attention deficit disorder or other behavioral disorders; or~~

~~(D) exhibit evidence of, or are at risk for, atypical patterns of behavior and social-emotional development in one or more of the following areas:~~

~~(i) delays or abnormalities in achieving emotional milestones;~~

~~(ii) difficulties with:~~

~~(I) attachment and interactions with parents, other adults, peers, materials and objects;~~

~~(II) ability to communicate emotional needs;~~

~~(III) motor or sensory development;~~

~~(IV) ability to tolerate frustration and control behavior; or~~

~~(V) ability to inhibit aggression;~~

~~(iii) fearfulness, withdrawal, or other distress that does not respond to the comforting of caregivers;~~

~~(iv) indiscriminate sociability; for example, excessive familiarity with relative strangers;~~

~~(v) self-injurious or other aggressive behavior;~~

~~(vi) substantiated evidence that raises concern for the child's emotional well-being regarding:~~

~~(I) physical abuse;~~

~~(II) sexual abuse; or~~

~~(III) other environmental situations;~~

~~as defined in G.S. 7A-517(1) and (21)~~

~~(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 admission of the client by the facility until 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) "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) "Detoxification" means the physical withdrawal of an individual from alcohol or other drugs in order that the individual can participate in rehabilitation activities.~~

~~(24) "Developmentally delayed children" means those whose development is delayed in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication, social and emotional; and adaptive skills. The specific level of delay must be:~~

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

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

~~(25) "DFS" means the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.~~

~~(26) "Direct care staff" means an individual who provides active direct care, treatment, rehabilitation or habilitation services to clients.~~

~~(27) "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) "DMH/DD/SAS" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603.~~

~~(29) "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) "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. The criteria for drug abuse delineated in the 1987 edition of 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 is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

~~(31) "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. The criteria for drug dependence delineated in the 1987 edition of 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 is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

~~(32) "DWI" means driving while impaired, as defined in G.S. 20-138.1.~~

~~(33) "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) "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, published 1/1/92 and incorporated by reference. This adoption by reference includes subsequent amendments and editions of the referenced material, which may be obtained at no cost from the Branch Head, Child and Adolescent Services, Developmental Disabilities Section, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.~~

~~(A) For the purposes of these services, however, transportation means assistance in the travel to and from the multidisciplinary evaluation, specified early intervention services provided by certified developmental day centers or other center based services designed specifically for children with or at risk for disabilities; and speech, physical or occupational therapy, or other early intervention services if provided in a specialized setting away from the child's residence.~~

~~(B) Transportation assistance may be provided by staff, existing public or private services, or by the family, who shall be reimbursed for their expenses, in accordance with applicable fee provisions.~~

~~(C) For the purposes of these services, special instruction means individually designed education and training in the strengths and needs of the child and family as identified in the multidisciplinary evaluation, in which the focus is on the major developmental areas and individual family needs. It occurs in two primary types of settings, home and mainstreamed center based:~~

~~(i) The mainstreamed center based settings can be those designed primarily for children with or at risk for disabilities, such as developmental day centers or therapeutic preschools, if they allow for planned and ongoing contact with children without disabilities.~~

~~(ii) Mainstreamed center based settings also include those established primarily for children without disabilities, such as preschools, family day care homes, licensed child care centers:~~

~~(I) when provided in these programs, special instruction also includes consultation and training for staff on curriculum design, teaching and behavior management strategies, and approaches to modification of the environment to promote learning; and~~

~~(II) service coordination activities, including assistance to the family in identifying such programs must be provided with special instruction, if requested by the family.~~

~~(35) "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.~~

~~(36) "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) "Governing body" means, in the case of a corporation, the board of directors; in the case~~

~~of an area authority, the area board; and in all other cases, the owner of the facility.~~

~~(38) "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, published 6/22/89 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~

~~(39) "Hearing" means, unless otherwise specified, a contested case hearing under G.S. 150B, Article 3.~~

~~(40) "High risk children" means those from birth to 36 months of age for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be necessary. There are two categories of high risk children. These are:~~

~~(A) High Risk Established: Diagnosed or documented physical or mental conditions which are known to result in developmental delay or atypical development as the child matures. Such conditions include, but need not be limited to are limited to the following:~~

~~(i) chromosomal anomaly or genetic disorders associated with developmental deficits;~~

~~(ii) metabolic disorders associated with developmental deficits;~~

~~(iii) infectious diseases associated with developmental deficits;~~

~~(iv) neurologic disorders;~~

~~(v) congenital malformations;~~

~~(vi) sensory disorders; or~~

~~(vii) toxic exposure; or~~

~~(viii) severe attachment disorders.~~

~~(B) High Risk Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or postneonatal risk conditions as defined on page 12 in the 1990 publication, "NORTH CAROLINA CHILD SERVICE COORDINATION PROGRAM" available from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material. These conditions are as follows:~~

~~(i) maternal age less than 15 years;~~

~~(ii) maternal PKU;~~

~~(iii) mother HIV positive;~~

~~(iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;~~

~~(v) parental blindness;~~

~~(vi) parental substance abuse;~~

~~(vii) parental mental retardation;~~

~~(viii) parental mental illness;~~

~~(ix) difficulty in parental or infant bonding;~~

~~(x) difficulty in providing basic parenting;~~

~~(xi) lack of stable housing;~~

~~(xii) lack of familial and social support;~~

~~(xiii) family history of childhood deafness;~~

~~(xiv) maternal hepatitis B;~~

~~(xv) birth weight less than 1500 grams;~~

~~(xvi) gestational age less than 32 weeks;~~

~~(xvii) respiratory distress (mechanical ventilator greater than six hours);~~

~~(xviii) asphyxia;~~

~~(xix) hypoglycemia (less than 25 mg/dl);~~

~~(xx) hyperbilirubinemia (greater than 20 mg/dl);~~

~~(xxi) intracranial hemorrhage;~~

~~(xxii) neonatal seizures;~~

~~(xxiii) major congenital anomalies;~~

~~(xxiv) CNS infection or trauma;~~

~~(xxv) congenitally acquired infection;~~

~~(xxvi) suspected visual impairment;~~

~~(xxvii) suspected hearing impairment;~~

~~(xxviii) no well child care by age six months;~~

~~(xxix) failure on standard developmental or sensory screening test;~~

~~(xxx) significant parental concern; and~~

~~(xxxi) suspected abuse or neglect.~~

~~(41) "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) "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) "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.~~

~~(44) "Infant" means an individual from birth to one year of age.~~

~~(45) "Legend drug" means a drug that cannot be dispensed without a prescription.~~

~~(46) "License" means a permit to operate a facility which is issued by DFS under G.S. 122C, Article 2.~~

~~(47) "Medication" means a substance recognized in the official "United States Pharmacopoeia" or "National Formulary" intended for use in the diagnosis, mitigation, treatment or prevention of disease.~~

~~(48) "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) "Neighborhood" - See "residential setting".~~

~~(50) "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) "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) "Parent" means the legally responsible person unless otherwise clear from the context .~~

~~(54) "Periodic service" means a service provided through short, recurring visits for persons who are mentally ill, developmentally disabled or substance abusers.~~

~~(55) "Personal assistance" means providing assistance to a client who is mentally ill, has a developmental disability or disabilities, or is a substance abuser, in order that the client can engage in activities and interactions from which the client would otherwise be limited or excluded because of the disability or disabilities. The assistance shall include, but need not be limited to:~~

~~(A) assistance in personal or regular living activities in the client's home;~~

~~(B) support in skill development; or~~

~~(C) support and accompaniment of the client in regular community activities or in specialized treatment, habilitation or rehabilitation service programs.~~

~~(56) "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.~~

~~(57) "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.~~

~~(58) "Preschool age child" means a child from three through five years of age.~~

~~(59) "Private facility" means a facility not operated by or under contract with an area program.~~

~~(60) "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.~~

~~(61) "Provider" means an individual, agency or organization that provides mental health, mental retardation or substance abuse services.~~

~~(62) "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.~~

~~(63) "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.~~

~~(64) "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.~~

~~(65) "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.~~

~~(66) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. These medications include, but are not limited to, antipsychotics, antidepressants, neuroleptics, lithium and minor tranquilizers.~~

~~(67) "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.~~

~~(68) "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 develop-~~

~~mentally 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.~~

~~(69) "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.~~

~~(70) "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.~~

~~(71) "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.~~

~~(72) "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.~~

~~(73) "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.~~

~~(74) "Rehabilitation" means training, care and specialized therapies undertaken to assist a client to reacquire or maximize any or all lost skills or functional abilities.~~

~~(75) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove a 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.~~

~~(76) "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.~~

~~(77) "Respite discharge" means that point in time when no additional incidents of respite services are anticipated.~~

~~(78) "Respite episode" means an uninterrupted period of time during which a client receives respite services.~~

~~(79) "Screening" means an assessment service which provides for a brief 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.~~

~~(80) "Secretary" means the Secretary of the Department of Human Resources or designee.~~

~~(81) "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.~~

~~(82) "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.~~

~~(83) "Sheltered employment" means a facility's provision of work and work training by:~~

~~(A) subcontracting from industries in the commu-~~

~~nity 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.~~

~~(84) "Staff member" means any individual who is employed by the facility.~~

~~(85) "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.~~

~~(86) "Support services" means services provided to enhance an individual's progress in his primary treatment/habilitation program.~~

~~(87) "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.~~

~~(88) "Toddler" means an individual from one through two years of age.~~

~~(89) "Treatment" means the process of providing for the physical, emotional, psychological and social needs of clients through services.~~

~~(90) "Treatment/habilitation plan" means a plan in which one or more professionals, privileged in accordance with 10 NCAC 14K .0319, 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.~~

~~(91) "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.~~

~~(92) "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 .0200 - LICENSURE

.0201 LICENSE REQUIRED

~~(a) No person shall establish, maintain or operate a licensable facility for the mentally ill, mentally retarded or otherwise developmentally disabled, or substance abusers without first obtaining a license from the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.~~

~~(b) In accordance with G.S. 122C-3(14) a facility shall be licensed if the primary purpose of the facility is to provide services for the care, treatment, habilitation or rehabilitation for one or more minors, or for two or more adults who are mentally ill, developmentally disabled or are substance abusers as follows:~~

~~(1) When the primary purpose of a 24 hour facility is to provide treatment, the facility shall be licensed in accordance with rules specific to the type of treatment provided or the population served; or~~

~~(2) When the primary purpose of a 24 hour facility is to provide habilitation, rehabilitation, or care in a home environment, thereby necessitating the presence of an employee who will provide client supervision, the facility shall be licensed under the provisions of 10 NCAC 14O .0700 - Supervised Living.~~

~~(c) Living arrangements that may be coordinated, organized or provided for or in conjunction with adult clients by the provision of case management or personal assistance shall not be considered residential facilities that require licensing under G.S. 122C.~~

~~(d) Material incorporated by reference in this Rule shall include subsequent amendments and editions.~~

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 143B-147.

.0202 EXCLUSIONS FROM LICENSURE

~~Those facilities and persons delineated in G.S. 122C-22(a) shall not be subject to licensure under the provisions of G.S. 122C, Article 2.~~

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

.0203 APPLICATION FOR LICENSE

~~(a) Any person as defined in G.S. 122C-3(28) intending to establish, maintain or operate a licensable facility for the mentally ill, mentally retarded or otherwise developmentally disabled or substance abusers shall apply to DFS for a license.~~

~~(b) The person shall submit a completed licensure application to the Licensure Section of DFS at least 30 days prior to the planned date of operation of the facility. In those situations involving therapeutic homes operated by either area programs or their contract agencies, where a facility is needed immediately, application and processing time may be shortened to a period not to exceed seven days.~~

~~(c) The person shall be in compliance with all applicable Certificate of Need and local zoning requirements.~~

~~(d) A new or revised license application may be required by DFS upon any change in ownership, construction or other alteration to the physical plant, (such as relocation of walls, doors or change in finishes) or the addition of or change of services.~~

Statutory Authority G.S. 122C-3(28); 122C-23; 122C-26; 143B-147.

.0204 CONTENT OF LICENSE APPLICATION FORMS

~~The content of license application forms shall include the following:~~

~~(1) name of the person as defined in G.S. 122C-3(28) submitting the application;~~

~~(2) business name used by the facility, if applicable;~~

~~(3) street location of the facility (include multiple addresses if more than one building at one site);~~

~~(4) name and title of the operator of the facility;~~

~~(5) type of facility; services offered; ages served; and, when applicable, capacity and a floor plan showing bed locations and room numbers, any unlocked time out rooms, and any locked interior or exterior doors which would prohibit free egress of clients; and~~

~~(6) indication of whether the facility is operated by an area program, under contract with an area program or is a private facility.~~

Statutory Authority G.S. 122C-3(28); 122C-23(c); 122C-27.

.0205 TYPES OF LICENSE

~~Each facility shall have either a provisional or a regular license.~~

Statutory Authority G.S. 122C-23; 122C-26; 143B-147.

.0206 PROVISIONAL LICENSE

~~(a) A provisional license may be granted when a facility is found to be temporarily unable to comply with a rule or rules and there is no immediate threat to the health, safety or welfare of the individuals served.~~

~~(b) Provisional licensure shall not exceed six months.~~

~~(c) During the provisional licensure period, the person shall submit a statement for review and approval by DFS describing the corrective action(s) taken.~~

~~(d) When all out of compliance issues are fully resolved and documented, a regular license shall be issued.~~

~~(e) A facility shall not receive two consecutive provisional licenses.~~

Statutory Authority G.S. 122C-23(e); 122C-26; 143B-147.

.0207 REGULAR LICENSE

~~(a) A regular license shall be issued only when a facility is in compliance with all applicable rules and statutes.~~

~~(b) A regular license shall be valid for a period not to exceed two years from the date on which the license is issued.~~

Statutory Authority G.S. 122C-23; 122C-26; 143B-147.

.0208 ISSUANCE OF LICENSE

~~(a) In accordance with the provisions of Rules .0206 and .0207 of this Section, DFS shall issue a license after completion of the following:~~

~~(1) DFS determines that the applicant is in compliance with all Certificate of Need rules as codified in 10 NCAC 3R .2600 when applicable;~~

~~(2) DFS approves the architectural drawings, physical plant changes, construction and room usage of the facility;~~

~~(3) DFS determines that the applicant is in compliance with all fire safety, sanitation and waste disposal requirements;~~

~~(4) DFS conducts an on-site inspection; and~~

~~(5) DFS reviews the facility to determine compliance with licensure rules and applicable statutes.~~

~~(b) No license shall be issued when DFS determines that there is an immediate threat to the health, safety or welfare of an individual in the facility.~~

~~(c) A license shall be issued to the applicant for the specific premises and types of approved licensed services indicated on the application.~~

~~(d) DFS shall issue a corrected license in cases of administrative or clerical error by the applicant or DFS. Such corrected license shall not be considered amendment of a license.~~

Statutory Authority G.S. 122C-23; 122C-26; 122C-27(5); 143B-147.

.0209 POSTING OF LICENSE

~~(a) For all facilities providing periodic and day services, the license shall be posted in a prominent location and accessible to public view within the licensed premises.~~

~~(b) For 24 hour facilities for the mentally ill, mentally retarded or other developmentally disabled, the license shall be readily available for review upon request.~~

~~(c) For 24 hour facilities for substance abusers, the license shall be posted in a prominent location and accessible to public view within the licensed premises.~~

~~(d) Additional copies of the license shall be available or posted in accordance with (a), (b) and (c) of this Rule when there are multiple buildings at the licensed location.~~

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

.0210 LICENSE RENEWAL

~~(a) Renewal of regular licenses shall be as specified in G.S. 122C-23(e).~~

~~(b) Prior to license renewal, the licensee shall submit to DFS the following information:~~

~~(1) application for license renewal;~~

~~(2) local fire inspection reports on an annual basis;~~

~~(3) local sanitation inspection reports on an annual basis for facilities which provide room or board; and~~

~~(4) a brief description of any changes in the facility since the most recent initial or renewal application form was completed.~~

~~(c) Failure of the licensee to supply the required information may result in revocation of the license to operate the facility.~~

~~(d) DFS shall obtain any other information necessary for proper administration and enforcement of all applicable licensure requirements.~~

Statutory Authority G.S. 122C-23(e); 122C-26; 130A-235; 143B-147.

.0211 SEPARATE LICENSE

~~(a) A single license shall be issued to each facility with each separate and distinct service listed individually on the license.~~

~~(b) Separate licenses shall be required for facilities which are maintained on separate sites even though they are under the same ownership or management.~~

Statutory Authority G.S. 122C-23(b); 122C-26; 143B-147.

.0212 LICENSED CAPACITY

~~A facility shall accept no more clients than the number for which it is licensed.~~

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

.0213 LICENSURE INSPECTION

~~(a) DFS shall inspect all facilities prior to licensure. If a facility is provisionally licensed, DFS shall re-inspect the facility prior to expiration of the provisional license to assure correction of findings of non compliance. Once a regular license has been issued to a facility, the facility shall receive an on site licensure inspection at least once every two years, and more frequently if necessary, to determine compliance with all applicable licensure requirements.~~

~~(b) All facility inspections shall be conducted in accordance with the provisions of G.S. 122C-25.~~

~~(c) Inspections conducted as a result of a complaint alleging the violation of any licensure requirement may be conducted at any time of the day without advance notice.~~

Statutory Authority G.S. 122C-25(c); 122C-27(4).

.0214 CLOSURE OF A FACILITY OR DISCONTINUATION OF A SERVICE

~~When a licensee plans to close a facility or discontinue a service, written notice at least 30 days in advance shall be provided to DFS. This notice shall address continuity of services to clients in the facility.~~

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

.0215 DENIAL: SUSPENSION: REVOCATION OR AMENDMENT OF LICENSE

~~(a) DFS may deny, revoke, suspend or amend a license when there is substantial failure to meet any of the requirements of G.S. 122C, Article 2 or other applicable statutes or any applicable rule adopted to meet the provisions of these statutes.~~

~~(b) When an application for initial license is denied, DFS shall give the applicant written notice of intent to deny the license and the reasons for the denial. The written notice shall also advise the applicant of the right to request a contested case hearing according to the procedures in Rule .0218 of this Section. Despite any appeal action, the facility shall not operate until a decision is made to issue a license.~~

~~(c) Except for summary suspensions which are governed by (d) of this Rule, DFS shall give the licensee written notice of intent to revoke, suspend or amend the license; the reasons for the proposed action; and the right to request a contested case hearing according to the procedures in Rule .0218 of this Section. If the licensee does not request a contested case hearing within the prescribed time specified in G.S. 150B-23(f), DFS may revoke, suspend or amend the license immediately. If the licensee petitions for a hearing, the existing license does not expire and no action may be taken until the last day for applying for judicial review of the order under G.S. 150B-3 and 150B-45.~~

~~(d) Should findings show that public health, safety or welfare considerations require emergency action, DFS shall issue an order of summary suspension and include the findings in its order. At the time the order is issued, DFS shall also petition the Office of Administrative Hearings for a contested case hearing in the matter according to G.S. 150B-23(a). The order shall suspend only those privileges or services as necessary to protect the public interest. Examples of specific services or privileges include suspension of admissions, removal of all clients or a certain category of at-risk clients from the facility, suspension of~~

~~on site laboratory services, and suspension of privileges to use a certain building or portion of a building. An order of summary suspension shall be effective on the date specified in the order or on service of the order at the last known address of the licensee, whichever is later, and shall be in full force and effect during any contested case hearing as provided for in G.S. 150B-3(c). The order may also set a date by which the licensee shall remove the cause for the emergency action. If the order for summary suspension includes a date by which the licensee shall remove the cause for emergency action and the licensee fails to meet that deadline, DFS may take action to revoke or amend the facility's license according to (c) of this Rule.~~

Statutory Authority G.S. 122C-24; 122C-26; 122C-27; 143B-147; 150B-3; 150B-12(a); 150B-23(a)(f); 150B-45.

.0216 WAIVER OF LICENSURE RULES

~~(a) The Director of DFS may waive any licensure rule contained in 10 NCAC 14K through 14O. The decision to grant or deny the waiver request shall be based on, but not limited to, the following:~~

~~(1) the nature and extent of the request;~~

~~(2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;~~

~~(3) the waiver will not affect the health, safety, or welfare of clients;~~

~~(4) the existence of good cause; and~~

~~(5) documentation of area board approval when requests are from area programs and contract agencies of area programs, or documentation of governing body approval when requests are from private facilities not contracting with area programs.~~

~~(b) Requests for waivers shall be sent to the Director of DFS, 701 Barbour Drive, Raleigh, North Carolina 27603.~~

~~(c) The request shall be in writing and shall contain:~~

~~(1) the name, address and telephone number of the requester;~~

~~(2) the name, address and telephone number of the facility for which the waiver is requested;~~

~~(3) the rule number and title of the rule or requirements for which waiver is being sought;~~

~~(4) a statement of facts showing:~~

~~(A) reason for, and the nature and extent of, the request; and~~

~~(B) that the health, safety or welfare of clients will not be threatened.~~

~~(5) documentation of area board approval when requests are from area programs and contract agencies of area programs, or documentation of governing body approval when requests are from private facilities not contracting with area programs.~~

~~(d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/MR/SAS; and may also request additional information or consult with additional parties as appropriate.~~

~~(e) A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/MR/SAS. If the rule in question was adopted by the commission, the Director of DMH/MR/SAS shall send a copy of the decision to all commission members.~~

~~(f) The decision of the Director of DFS regarding a waiver request may be appealed to the Commission through the contested case process set out in 10 NCAC 14B .0300. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.~~

~~(g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.~~

Statutory Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147.

.0217 DECLARATORY RULINGS

~~(a) The Commission shall have the authority to issue all declaratory rulings arising under G.S. 122C, Article 2, and 10 NCAC 14K through 14O.~~

~~(b) Requests for declaratory rulings shall be initiated by the filing of a petition with the Commission at 325 N. Salisbury Street, Raleigh, N.C. 27611 in care of the Director of the DMH/MR/SAS. The petition shall contain the following information:~~

~~(1) the name, address, and telephone number of the petitioner;~~

~~(2) the statute or rule to which the petition relates;~~

~~(3) a concise statement of the facts giving rise to the petition and the impact or potential impact of the statute or rule on the petitioner, with supporting documentation as appropriate;~~

~~(4) a specific request for a declaratory ruling; and~~

~~(5) the consequences of a failure to issue the declaratory ruling.~~

~~(c) The declaratory ruling process may consist of written submissions, hearings or other procedures deemed appropriate by the Chairman of the Commission or designee. The Chairman or designee may notify persons who might be affected by the issuance of the declaratory ruling of any opportunity that exists to submit written statements or make oral presentations at a hearing.~~

~~(d) A record of all declaratory ruling proceedings shall be maintained by the agency legal specialist of the DMH/MR/SAS and shall be available for public inspection during regular business hours. The record shall contain the following information:~~

~~(1) the petition requesting the declaratory ruling;~~

~~(2) all of the memoranda and written submissions relating to the declaratory ruling;~~

~~(3) a recording or transcript of any hearing that is~~

~~held pursuant to the petition for the declaratory ruling; and~~

~~(4) the declaratory ruling or a statement of the reasons for refusal to issue the declaratory ruling.~~

~~(e) The Commission may decline to issue a declaratory ruling if it has good cause to believe that the issuance of a declaratory ruling would be undesirable. Good cause for declining to issue a declaratory ruling may include the following instances:~~

~~(1) the petition for the declaratory ruling addresses a situation or set of facts similar to one that was considered during the rule making process, unless the petitioner can show a change in circumstances sufficient to warrant issuance of the declaratory ruling; or~~

~~(2) the facts contained in the petition reveal the existence of a factual dispute, and a contested case would be more appropriate.~~

~~(f) The Commission shall issue the declaratory ruling or notify the petitioner of its refusal to issue the declaratory ruling and the reasons for that refusal within 60 days of the receipt of the petition by the Commission.~~

Statutory Authority G.S. 122C-26; 143B-10; 143B-147; 150B-17.

.0218 CONTESTED CASES

~~(a) Appeals Procedure.~~

~~(1) Except for contested cases regarding summary suspensions which shall be initiated in accordance with Rule .0215(d) of this Section, a licensee or an applicant for a license who has been notified by DFS of its intent to take adverse action on a license or application for license may petition for a hearing prior to or after the issuance of the final decision on the adverse action in accordance with G.S. 150B-3.~~

~~(2) The petition shall be filed with the Office of Administrative Hearings within 60 days after receipt of the notification concerning the adverse action.~~

~~(3) In accordance with G.S. 1A-1, Rule 4(j)4, a copy of the petition shall be served on a registered agent for service of process for the Department. A list of registered agents may be obtained from the Office of Legislative and Legal Affairs, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina 27611.~~

~~(b) Recommended Decision.~~

~~(1) The administrative law judge in the Office of Administrative Hearings shall issue a recommended decision on the contested case in accordance with G.S. 150B-34.~~

~~(2) Prior to the issuing of the recommended decision, the Chairman of the Commission or members designated by the Chairman or any party to the contested case may submit written arguments to the administrative law judge. A copy of these arguments shall be included in the official record.~~

~~(c) Final Decision. The Secretary shall make the final agency decision in contested cases processed under this Rule in accordance with G.S. 150B-36.~~

Statutory Authority G.S. 122C-24; 122C-26; 143B-147; 150B-3; 150B, Article 3.

.0219 DEEMED STATUS

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

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

~~(1) JCAHO statement of construction and fire protection (as submitted to JCAHO by the accredited facility);~~

~~(2) JCAHO reports and recommendations;~~

~~(3) JCAHO focused survey reports;~~

~~(4) Accredited facility progress reports which have been sent to the facility by JCAHO; and~~

~~(5) Permission to participate in any regular survey conducted by the JCAHO.~~

~~(c) Any facility licensed under the provisions of the rules contained in 10 NCAC 14K through 14O shall, however, continue to be subject to inspection by the Secretary.~~

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

SECTION .0300 - FACILITY AND PROGRAM MANAGEMENT

.0301 GOVERNING BODY

~~The governing body shall establish policies, rules and a table of organization to guide relationships between itself and the operator and staff. Written policies regarding authority and responsibility shall be required.~~

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

.0302 OPERATOR

~~(a) The governing body shall designate in writing an operator to be responsible for the management of the~~

~~facility. An individual shall not serve concurrently as the operator of more than one licensed facility except under the following conditions:~~

~~(1) the facilities under the management authority of the operator shall only be those which are owned or leased by the same governing body for whom the operator is functioning as a full-time employee; and~~

~~(2) when multiple facilities are operated under the management authority of a single operator, all such facilities shall be within a 50-mile radius of the operator's primary work location.~~

~~(b) A 24-hour facility licensed for more than six clients shall not be included under the shared management authority authorized in this Rule.~~

~~(c) Should the position of the operator become vacant, the governing body shall notify DFS in writing of:~~

~~(1) the name of the temporary replacement within seven days of such vacancy; and~~

~~(2) the name of the permanent replacement within seven days of such designation.~~

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

.0303 DISCLOSURE OF CONVICTIONS

~~All facilities shall require that applicants for employment disclose any conviction of an offense against the law other than a minor traffic violation. Any offense and how recently the applicant was convicted shall be evaluated by the facility operator. The decision regarding employment shall be based upon the offense in relation to the job for which the applicant is applying.~~

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

.0304 PROFESSIONAL STAFF QUALIFICATIONS

~~The professional staff of a facility shall be currently licensed, registered or certified, as appropriate, in accordance with applicable N.C. State Laws and shall meet the individual qualifications established by the governing body of the facility for each position.~~

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

.0305 PERSONNEL RECORD

~~A separate personnel record shall be maintained on each individual employed indicating the training, experience and other qualifications for the position, including verification of this information. In cases where professional licensure, registration or certification is required, annual documentation shall be included in the individual's personnel record.~~

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

.0306 JOB DESCRIPTION

~~Each employee shall be furnished a copy of his job description.~~

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

.0307 EMPLOYEE EDUCATION AND TRAINING

~~(a) Each facility shall provide or secure orientation programs and annual continuing education and training for employees to enhance their competencies and knowledge needed to administer, manage and deliver quality services.~~

~~(b) Each facility shall assure the maintenance of an ongoing record of all education and training activities provided or secured for employees.~~

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

.0308 ORGANIZATION OF POLICIES AND PROCEDURES

~~Each facility shall maintain its policies and procedures at an accessible location in an indexed, organized manner.~~

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

.0309 CLIENT FEE FOR SERVICE

~~The governing body shall develop written policies for client fee assessment and collection practices. When infants or toddlers with or at risk for atypical development or developmental delays are served, fees shall not be charged to the parents for the following services:~~

~~(1) child identification and screening;~~

~~(2) assessment;~~

~~(3) case management; and~~

~~(4) administrative and coordinative activities related to the development, review and implementation of the Individualized Family Service Plan (IFSP), implementation of procedural safeguards and other administrative activities related to services for this population.~~

Statutory Authority G.S. 122C-26; 122C-146; 143B-147.

.0310 INFORMATION FOR CLIENTS

~~The facility shall make available information regarding rates, services, client rights, and other client specific policies and rules to each client, potential client and legally responsible person.~~

Statutory Authority G.S. 122C-26; 122C-146; 143B-147.

.0312 SCREENING

~~(a) The governing body shall develop and implement written screening policies establishing a systematic means of determining each individual's need for services.~~

~~(b) The policies shall specify the qualifications, based on education and experience, 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 shall be encouraged to participate in the screening of the client.~~

~~(d) Screening shall include the following:~~

~~(1) an assessment of the individual's presenting problem or need;~~

~~(2) 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

~~The governing body shall develop and implement written policies for each facility 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.~~

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

.0314 ASSESSMENT

~~(a) The governing body shall develop and implement written policies regarding admission assessments for clients in each facility.~~

~~(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.~~

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

~~(1) an assessment of levels of physical, (including vision and hearing), communication, cognitive, social and emotional and adaptive skills development, and the requirements set forth in 34 C.F.R. Part 303.344(a)(2);~~

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

~~(3) if requested by the family, a determination of the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with or at risk for a disability. The family focused and directed assessment shall be based on information provided through a personal interview and incorporate the family's description of these resources, priorities, and concerns in this area;~~

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

~~(5) no single procedure used as the sole criterion for determining a child's eligibility;~~

~~(6) an integrated assessment process which involves at least two persons, each representing a different discipline or profession, with the specific number and types of disciplines based on the particular needs of the child:~~

~~(A) The assessment shall include current medical information provided by a physician, physician's assistant, or nurse practitioner; however, a physician, physician's assistant, or nurse practitioner is not required as one of the disciplines involved in the assessment; and~~

~~(B) Further information regarding the assessment may be found in the document "Eligibility Determination for the Infants-Toddler Program", published by the Department of Environment, Health, and Natural Resources;~~

~~(7) an evaluation process based on informed clinical opinion;~~

~~(8) an assessment process completed within 45 calendar days from the date of referral. The referral shall be initiated by a request for these services made to any one of the public agencies participating in the PL 99-457 Interagency Agreement. The request shall become a referral when the area program determines that all of the following is available:~~

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

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

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

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

~~(9) a 45 calendar day completion requirement which may be extended in exceptional circumstances, such as, the child's health assessment is being completed out of state, or family desires make it impossible to complete the assessment within the time period. The specific nature and duration of these circumstances which prevent completion within 45 days and the attempts made by the provider to complete the assessment shall be documented and an interim IFSP shall be developed and implemented; and~~

~~(10) the child's family or legally responsible person shall be fully informed of the results of the assessment process.~~

~~(f) The C.F.R. incorporated by reference in this Rule includes subsequent amendments and editions of the referenced material. A copy of the C.F.R. is available at no cost from the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.~~

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

.0315 TREATMENT/HABILITATION PLANNING AND DOCUMENTATION

~~(a) The governing body shall develop and implement written policies regarding individual treatment/habilitation plans and the qualifications of staff, based on education and experience, who will be responsible for implementation of such plans.~~

~~(b) A treatment/habilitation plan shall be based upon an assessment of the client's condition, assets and needs, and the resources to meet these needs, and shall be developed in partnership with the client.~~

~~(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 (h) 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 (k) of this Rule.~~

~~(h) For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite:~~

~~(1) there shall be a habilitation plan which is referred to as the Individualized Family Service Plan (IFSP) which shall include:~~

~~(A) a description of the child's present health status and levels of physical (including vision and hearing), communication, cognitive, social and emotional, and adaptive development;~~

~~(B) with the concurrence of the family, a description of the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant and toddler with or at risk for a disability;~~

~~(C) goals for the child, and, if requested, goals for the child's family;~~

~~(D) criteria and time frames to be used to determine progress towards goals;~~

~~(E) planned habilitation procedures related to the goals;~~

~~(F) a statement of the specific early intervention services to be provided to meet the identified child and family needs, the initiation dates, frequency and method, duration, intensity and~~

~~location (including the most natural environment) of service delivery, and the persons or agencies responsible;~~

~~(G) the name of the service coordinator from the profession most immediately relevant to the needs of the child or family; and who is otherwise qualified to carry out all applicable responsibilities for coordinating with other agencies and individuals the implementation of the IFSP;~~

~~(H) the plans for transition into services which are the responsibility of the N.C. Department of Public Instruction, or other available services, when applicable;~~

~~(I) the payment arrangements for the specific services delineated in Subparagraph (h)(1)(F) of this Rule;~~

~~(J) a description of medical and other services needed by the child, but which are not required under P.L. 99-457, and the strategies to be pursued to secure those services through public or private resources. The requirement regarding medical services does not apply to routine medical services, such as immunization and well baby care, unless the child needs these services and they are not otherwise available.~~

~~(2) The IFSP shall be:~~

~~(A) reviewed on at least a semi-annual basis or more frequently upon the family's request; and~~

~~(B) revised as appropriate, but at least annually.~~

~~(3) The initial development and annual revision process for the IFSP for infants and toddlers shall include participation by:~~

~~(A) the parent or parents of the child;~~

~~(B) other family members, as requested by the parent;~~

~~(C) an advocate or person outside of the family if the parent requests that the person participate;~~

~~(D) the provider of the early intervention services;~~

~~(E) the service coordinator designated for the family, if different from the provider of the early intervention services; and~~

~~(F) the provider of the assessment service, if different from the provider of the early intervention services.~~

~~(4) The initial IFSP meeting and annual reviews shall be arranged and written notice provided to families early enough to promote maximum opportunities for attendance. The semi-annual review process shall include participation by persons identified in Subparagraphs (h)(3)(A) through (E) of this Rule. If any of these assessment and intervention providers are unable to attend one of the development or review meetings, arrangements may 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. Such arrangements must be approved by all of the participants.~~

~~(5) The IFSP for infants and toddlers shall be based upon the results of the assessment referenced in 10 NCAC 14K .0314(e) and upon information from any ongoing assessment of the child and family. However, early intervention services may commence before completion of this assessment if:~~

~~(A) parental consent is obtained; and~~

~~(B) the assessment is completed within the 45 day time period referenced in 10 NCAC 14K .0314(e).~~

~~(6) In the event that exceptional circumstances, such as child illness, residence change of family, or any other similar emergency, make it impossible to complete the assessment within the 45 day time period referenced in 10 NCAC 14K .0314(e), the circumstances shall be documented and an interim IFSP developed with parent permission. The interim IFSP shall include:~~

~~(A) the name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;~~

~~(B) goals for the child and family when recommended;~~

~~(C) those early intervention services that are needed immediately; and~~

~~(D) suggested activities that may be carried out by the family members.~~

~~(7) 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 IFS.~~

~~(8) The IFSP shall be developed within 45 days of referral for those children determined to be eligible. The referral shall be as defined in 10 NCAC 14K .0314(e)(10).~~

~~(9) The contents of the IFSP shall be fully explained to the parents, and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service, or withdraw consent after first providing it, that service shall not be provided. The early intervention services for which parental consent is obtained must be provided.~~

~~(10) IFSP meetings shall be conducted in settings convenient to and in the natural language of the family.~~

~~(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 limited 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.~~

~~(k) 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.~~

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) 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.~~

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

.0318 SERVICE COORDINATION

~~(a) Coordination shall be maintained among all staff members contributing to the evaluation, planning and treatment/habilitation effort for each client.~~

~~(b) Each facility utilizing shifts or relief staff shall develop mechanisms to ensure adequate communication among staff regarding clients.~~

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

.0319 QUALITY ASSURANCE

~~(a) Each governing body shall assure the establishment and implementation of a written quality assurance plan which shall describe quality assurance activities and how they will be carried out. Quality assurance activities shall include the following:~~

~~(1) an objective and systematic system for monitoring and evaluating the quality and appropriateness of client care;~~

~~(2) a written plan of professional or clinical supervision describing such activities and how they shall be carried out;~~

~~(3) the establishment and implementation of program evaluation activities;~~

~~(4) the strategies for improving client care; and~~

~~(5) the resolution of identified problems.~~

~~(b) For those facilities providing treatment/habilitation, supervision of staff of a facility shall be conducted as follows:~~

~~(1) Each clinical staff member of a mental health facility who is not a qualified mental health professional shall receive professional supervision from a qualified mental health professional.~~

~~(2) Each direct care staff member of a mental retardation facility who is not a qualified developmental disabilities professional shall be supervised by, or have access to the professional supervision of, a qualified developmental disabilities professional. Such access shall be documented by a written agreement for consultation on issues related to the habilitative process for persons with mental retardation or other developmental disabilities.~~

~~(3) Each clinical staff member of an alcoholism treatment facility who is not a qualified alcoholism or substance abuse professional shall receive professional supervision from a qualified alcoholism or substance abuse professional.~~

~~(4) Each clinical staff member of a drug treatment facility who is not a qualified drug abuse or substance abuse professional shall receive professional supervision from a qualified drug abuse or substance abuse professional.~~

~~(5) Each clinical staff member of a facility which provides both alcohol and drug abuse treatment who is not a qualified substance abuse professional shall be supervised by a qualified substance abuse professional.~~

~~(c) Privileging of professional staff of a facility shall be conducted as follows:~~

~~(1) Each facility shall implement written policies and procedures by which the qualifications of each professional are examined and a determination made as to treatment/habilitation privileges granted and supervision needed.~~

~~(2) Delineation of privileges shall be based on documented verification of the individual's competence, training, experience and licensure, certification or registration.~~

Statutory Authority G.S. 122C-26; 143B-47.

.0320 INCIDENT REPORTING

~~(a) Each governing body shall develop and implement a written policy for reporting any incident, unusual occurrence or medication error regarding clients.~~

~~(b) Incident and unusual occurrence 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. Incidents may include but are not limited to accidents.~~

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

.0321 GROUPING OF CLIENTS

~~Each facility shall have and implement a policy to ensure that each client is served appropriately in relation to age, developmental level, sex, and nature and severity of clinical problems.~~

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

.0322 FIRE AND DISASTER PLAN

~~A written fire and disaster plan for each facility shall be developed with the assistance of appropriate experts in fire and safety and shall be approved by the local fire authority. The plan shall be made available to all staff and evacuation procedures and routes shall be posted in the facility. The plan shall include at least the following:~~

~~(1) assignments of personnel to specific tasks and responsibilities;~~

~~(2) instructions on the use of alarm systems and signals;~~

~~(3) information on methods of fire containment;~~

~~(4) a system for notification of the fire department and occupants of the building;~~

~~(5) location of fire fighting equipment; evacuation procedures and routes;~~

~~(6) procedures for prompt transfer of clients and records to an appropriate facility; and~~

~~(7) other provisions as the local situation dictates.~~

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

.0323 FIRE DRILLS FOR 24-HOUR FACILITIES

~~(a) Fire and disaster drills in a 24-hour facility shall be held at least quarterly and shall either be repeated for each shift or be conducted when personnel from all shifts are present. Drills shall be conducted under conditions that simulate fire emergencies in order to:~~

~~(1) acquaint staff and clients with a means of evacuating buildings that will ensure orderly and controlled exit without panic;~~

~~(2) ensure that all staff members on all shifts are trained to perform assigned tasks;~~

~~(3) ensure that all staff members on all shifts are familiar with the operation of fire fighting equipment in the facility; and~~

~~(4) provide documentation of problems that occurred during the drill and what was done to correct these problems.~~

~~(b) Responsibility for the planning and conducting of drills shall be assigned to individuals who have a demonstrated ability to exercise leadership.~~

~~(c) In conducting drills, emphasis shall be placed upon orderly evacuation rather than upon speed.~~

~~(d) The facility shall have a policy requiring that staff participate in fire drills.~~

~~(e) Special provisions, such as fire chutes, shall be made for the evacuation of non-ambulatory clients.~~

~~(f) Fire alarm systems, where available, shall be used regularly in fire drills.~~

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

.0324 EQUIPMENT AND FURNISHINGS

~~All residential facilities shall equip and furnish the~~

~~bathroom, living room, den, kitchen and other areas of the facility in such a way as to provide a comfortable and normalized living environment.~~

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

.0326 OUTDOOR ACTIVITY SPACE/EQUIPMENT

~~(a) Facilities that provide structured outdoor activities for clients shall provide space that is suitable for the ages and treatment/habilitation needs of the clients served.~~

~~(b) Outdoor equipment shall be maintained in good repair, safe for use and shall be age appropriate.~~

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

.0327 COMPLIANCE WITH CLIENTS' RIGHTS STATUTES

~~(a) The governing body shall develop and implement additional policies and procedures necessary to ensure compliance with North Carolina General Statutes 122C-51 through 122C-62, 122C-65, 122C-66 and 130A-143, in each of its facilities.~~

~~(b) The governing body shall develop and implement policies and procedures that ensure compliance with client rights requirements as specified in 10 NCAC 14P, Q, R and S, Division publication CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2 (01/01/91).~~

Statutory Authority G.S. 122C-51 through 122C-62; 122C-65; 122C-66; 130A-143; 143B-147.

.0328 CLIENT GRIEVANCE POLICY

~~The governing body shall develop and implement a written client grievance policy which identifies procedures for review and disposition of client grievances.~~

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

.0329 VOLUNTARY NON-COMPENSATED WORK

~~The governing body shall establish a policy regarding voluntary non-compensated work performed by the client. This policy shall specify whether voluntary non-compensated work is allowed at the facility or whether it is prohibited by state or federal laws or by decision of the governing body.~~

Statutory Authority G.S. 122C-26; 122C-51; 143B-147.

.0333 RESEARCH REVIEW BOARD

~~(a) Each research activity of each facility which involves clients in research activities shall be reviewed and approved by a research review board prior to the initiation of the research project. The research review board is a group comprised of at least five members which has the authority to approve, require modification, or disapprove proposed research projects subject to the approval of the Facility Director. Individuals not directly associated with research projects under consideration shall comprise a majority of the review board. The review board may be established by the facility conducting research activities or by another public or private agency, institution or organization.~~

~~(b) Each proposed research project shall be presented to a research review board as a written protocol containing the following information:~~

~~(1) identification of project and investigator;~~

~~(2) abstract, containing a short description of the project;~~

~~(3) statement of objectives and rationale; and~~

~~(4) description of methodology, including informed consent if necessary.~~

~~(c) Prior to the initiation of each research project, a research review board shall:~~

~~(1) conduct an initial review of the project;~~

~~(2) state the frequency with which it will review the project after it has been initiated; and~~

~~(3) hold a review prior to any major changes being made in research procedures.~~

~~(d) Written minutes of each research board's meeting shall be maintained and contain documentation that:~~

~~(1) risks to subjects were minimal and reasonable for the benefits to be accrued;~~

~~(2) unnecessary intrusion on subjects was eliminated;~~

~~(3) informed consent was appropriately provided for; and~~

~~(4) confidentiality of subjects was protected.~~

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

.0334 SUBJECT PARTICIPATION IN RESEARCH PROJECTS

~~(a) Informed, written consent shall be obtained from each client in a research project, or from the legally responsible person, if the client is a minor or incompetent adult, to include the following:~~

~~(1) documentation that the client has been informed of any potential dangers that may exist and that he understands the conditions of participation; and~~

~~(2) notice of the client's right to terminate participation at any time without prejudicing the treatment he is receiving.~~

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

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

.0335 MEDICAL EMERGENCIES

~~The governing body shall develop and implement a written plan to be utilized in medical emergencies involving clients.~~

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

.0336 EMERGENCY INFORMATION

~~Each facility shall maintain emergency information for each client which includes the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the client's preferred physician.~~

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

.0337 EMERGENCY CARE PERMISSION

~~(a) 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.~~

~~(b) Each facility shall develop and implement operating procedures which establish the time in which a signed statement shall be obtained.~~

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

.0338 STAFF TRAINING FOR MEDICAL EMERGENCIES

~~During hours of operation of each treatment/habilitation facility, at least one staff member shall be available who is trained in basic first aid, cardio pulmonary resuscitation, seizure management, and the Heimlich maneuver or other approved Red Cross first aid techniques for relieving airway obstruction.~~

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

.0339 PHYSICIAN RESPONSIBLE FOR PROVISION OF MEDICAL SERVICES

~~A physician shall have responsibility for the provision of medical services associated with the mental health, mental retardation and substance abuse needs of clients.~~

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

.0340 PRIVACY FOR PHYSICAL EXAMINATIONS /MEDICAL PROCEDURES

~~When physical examinations or medical procedures are performed, including the taking of a medical history or counseling about a medical concern, the examination area shall afford privacy for the client.~~

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

.0341 FIRST AID SUPPLIES

~~Each facility shall have access to first aid supplies.~~

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

.0342 EDUCATIONAL REQUIREMENTS FOR CHILDREN/ADOLESCENTS

~~Except for community respite services, each facility serving children and adolescents shall:~~

~~(1) ensure that the public education requirements of the N.C. Department of Public Instruction are met for each client;~~

~~(2) develop and implement written policies regarding transition of educational services between the lead education agency (LEA) and the facility; and~~

~~(3) be responsible for coordinating each child's or adolescent's individual treatment plan with this individualized education program.~~

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

.0343 RESPONSIBILITY FOR WATER SAFETY

~~Each facility which makes water activities available shall assure that an individual holding a current certificate in life saving from a nationally recognized recreation program is on site and providing direct supervision of water activities.~~

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

.0344 SPECIALIZED THERAPIES

~~Medical care, physical therapy, occupational therapy, language and communication therapy, and nursing care shall be provided by, or under the direct supervision of, individuals licensed or registered to perform these activities.~~

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

.0345 TESTING SERVICES

~~Psychological, developmental, educational and intelligence testing shall be performed by staff or evaluators who are appropriately licensed, certified or trained to utilize the particular testing instrument being administered.~~

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

.0346 LABORATORY POLICIES AND PROCEDURES

~~The governing body of each facility which orders laboratory tests shall develop a written policy which specifies the procedures to be followed including authorization for, and follow up of, these tests. The policy shall specify who shall bear the financial responsibility for these laboratory procedures and shall require compliance with G.S. 130A-139 and 130A-148.~~

Statutory Authority G.S. 122C-26; 130A-139; 130A-148; 143B-147

.0347 LABORATORY APPROVAL

~~The governing body shall assure that laboratory tests are performed, by a laboratory that is either certified by Medicare or licensed under the Clinical Laboratory Improvement Amendments of 1988 or accredited by the Joint Commission on Accreditation of Health Care Organizations or the College of American Pathologists.~~

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 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.

.0350 DISPENSING OF MEDICATION

~~(a) Medication shall be dispensed by a pharmacist or physician in a properly labeled container in accordance with state and federal law. Nurse practitioners and physicians' assistants may dispense medications in accordance with G.S. 90-18.1, 90-18.2 and rules adopted by the North Carolina Board of Pharmacy and codified in 21 NCAC 46 .1700. However, methadone for take home purposes may be supplied to a bonafide client of a methadone treatment service in a properly labeled container by a registered nurse employed by the service pursuant to the requirements of 10 NCAC 45G .0306; SUPPLYING OF METHADONE IN TREATMENT PROGRAMS BY RN.~~

~~(b) The medication container shall protect medication from light and moisture and shall be in a child proof container.~~

~~(c) The medication container label shall include the following:~~

~~(1) client's name;~~

~~(2) date issued or refilled;~~

~~(3) directions for administration;~~

~~(4) medication name and strength (strength optional with methadone);~~

~~(5) name, address and telephone number of dispensing site;~~

~~(6) prescriber's name;~~

~~(7) dispenser's or supplier's name; and~~

~~(8) ancillary cautionary labeling (if appropriate).~~

~~(d) The Rules which are adopted by reference in this Rule are adopted in accordance with the provisions of G.S. 150B-14(c).~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-68; 90-85.2; 122C-26; 143B-147; 150B-14(c).

.0351 PRESCRIPTION AND ADMINISTRATION OF MEDICATION

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

~~(1) individualized record of medication administered only by program staff, privileged in accordance with 10 NCAC 14K .0319, including record of doses administered;~~

~~(2) written approval of the legally responsible person of a minor or an incompetent adult is required before administering over-the-counter non-prescription medications;~~

~~(3) 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 the facility;~~

~~(4) documentation of medication administration errors and adverse drug reactions, and immediate notification of prescribing physician; and~~

~~(5) In addition, if the medication has been prescribed by a facility physician:~~

~~(a) written medication orders signed by the prescriber; and~~

~~(b) assessment by physician of client's drug therapy regimen for appropriateness, at least every six months, except methadone, which shall be reviewed with the client every three months.~~

Statutory Authority G.S. 90-21.5; 90-171.20(7),(8); 90-171.44; 122C-26; 143B-147.

.0352 STORAGE OF MEDICATION

~~(a) In facilities where medication is administered by staff, all medication shall be stored as follows:~~

~~(1) Medication shall be stored under proper conditions of sanitation, temperature, light, moisture and ventilation.~~

~~(2) Medication shall be stored in a securely locked cabinet except that this shall not apply to services provided in private homes.~~

~~(3) Only those persons authorized to prescribe or administer medication shall have access to stored medication.~~

~~(4) Medication for external use shall be segregated from medication for internal use.~~

~~(5) Medication stored in a refrigerator used for other purposes shall be kept in a separate, securely locked compartment.~~

~~(6) Space for medication storage shall be of sufficient size to allow separate storage of each client's medication and to prevent overcrowding.~~

~~(b) In facilities where clients self medicate, all clients shall receive instructions on how to properly store medication and be provided separate space, when appropriate, for the storage of medication in a secure manner.~~

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

.0353 DISPOSAL OF MEDICATION

~~Medications shall be disposed of in the following manner:~~

~~(1) Controlled substances. In consultation with the facility's providing or consulting pharmacist, the facility shall adopt procedures for the disposal of controlled substances consistent with state and federal laws.~~

~~(2) Non-controlled substances (prescription medication):~~

~~(a) Any service delivery site disposing of prescription medication shall do so in a manner that guards against diversion or accidental ingestion. The service delivery site shall dispose of said medication by incineration whenever available. Other acceptable methods of disposal where incineration is not available may include, but need not be limited to, the following:~~

~~(i) transfer of medication to a local pharmacy for destruction; or~~

~~(ii) flush into a sewer system.~~

~~(b) A record of medication disposal shall be maintained. The record shall include the following:~~

~~(i) client's name (if applicable);~~

~~(ii) name and strength of medication;~~

~~(iii) drugstore name and prescription number (if applicable);~~

~~(iv) quantity to be disposed;~~

~~(v) method of disposal;~~

~~(vi) date of disposal;~~

~~(vii) signature of employee disposing of the medication; and~~

~~(viii) signature of employee witnessing the disposal.~~

Statutory Authority G.S. 122C-26; 21 C.F.R. 1307.21; 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, 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 documented in the client record.~~

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

.0355 COMPLIANCE WITH N.C. CONTROLLED SUBSTANCES ACT

~~Each facility that maintains stocks of controlled substances shall be currently registered under the North Carolina Controlled Substances Act and shall be in compliance with Chapter 90 of the North Carolina General Statutes Article 5, North Carolina Controlled Substances Act, adopted pursuant to G.S. 150B-14(c). These rules are available free of charge from DMH/MR/SAS.~~

Statutory Authority G.S. 90-101; 122C-26; 143B-147.

.0356 NUTRITION REQUIREMENTS

~~(a) Each facility which serves or makes available meals for clients shall:~~

~~(1) comply with the recommended Dietary Allowance of the Food and Nutrition Board of the National Academy of Sciences 9th rev. ed, 1980 available at a cost of six dollars ($6.00) from the Office of Publications, National Academy Press, 2101 Constitution Avenue N.W., Washington, D.C. 20418; and~~

~~(2) provide food in keeping with general cultural, ethnic and life style patterns of the clients served.~~

~~(b) The material that is adopted by reference in this Rule is adopted in accordance with the provisions of G.S. 150B-14(c).~~

Statutory Authority G.S. 122C-26; 130A-361; 143B-147; 150B-14(c).

.0357 MODIFIED DIETS

~~Each facility which serves or makes available meals for clients shall provide modified diets in accordance with a physician's prescription and with a menu pattern approved by a registered dietitian.~~

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

.0358 STAFFING FOR FOOD SERVICE

~~Each facility which serves or makes available more than one meal daily shall designate the staff responsible for procurement, preparation and serving of meals and for the maintenance of equipment and sanitary work space.~~

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

.0359 FOOD SERVICE EQUIPMENT AND SPACE

~~Each facility which serves or makes available more than one meal daily shall:~~

~~(1) provide equipment and space to store food separately from other items;~~

~~(2) provide equipment and space to prepare and serve meals including all modified diet menu items; and~~

~~(3) designate areas for dining which shall be equipped and arranged to meet the needs of the population served.~~

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

.0360 VOLUNTEER SERVICES

~~In facilities where volunteer services are utilized:~~

~~(1) The objectives and scope of the volunteer service shall be clearly stated in writing.~~

~~(2) An orientation program shall be conducted to familiarize volunteers with the facility's goals and services and to provide appropriate clinical orientation regarding the facility's clients.~~

~~(3) The work of volunteers shall be supervised by appropriate staff of the facility.~~

~~(4) All volunteers shall be instructed regarding the requirements for maintaining confidentiality.~~

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

.0361 TRANSPORTATION POLICY

~~The governing body of each facility providing transportation for clients shall develop and implement a written transportation policy which shall address at least the following:~~

~~(1) eligibility of clients for transportation services;~~

~~(2) the means by which the facility shall provide transportation;~~

~~(3) procedures to be employed in emergency situations occurring during the transportation of clients;~~

~~(4) qualifications and training of vehicle drivers and aides; and~~

~~(5) fees, if any, for transportation.~~

Statutory Authority G.S. 122C-112; 122C-146; 143B-147.

.0362 LICENSED DRIVER

~~Each driver providing transportation for clients shall hold a current license to operate the type of vehicle to which he is assigned.~~

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

.0363 SAFETY PRECAUTIONS

~~(a) A seat and a seat belt shall be provided for each individual being transported in a vehicle except that the provision of seat belts shall not be required for individuals being transported in a bus for which the manufacturing code does not recommend the installation of seat belts.~~

~~(b) When physically handicapped individuals are transported, the vehicle shall provide secure storage for adaptive equipment.~~

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

.0364 TRANSPORTATION OF MINORS

~~(a) Each child six years of age and under shall be transported in a child passenger restraint system (car safety seat or seat belts) which met applicable federal standards when the equipment was manufactured. Children three years of age and under shall be transported in a car safety seat.~~

~~(b) When four or more preschool children are transported in the same vehicle, at least two adults shall be present in the vehicle.~~

~~(c) When two or more preschool children who require special assistance while boarding or riding in a vehicle are transported in the same vehicle, there shall be one adult, other than the driver, to assist in supervision of the children.~~

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

.0365 DWI SUBSTANCE ABUSE ASSESSMENTS

~~(a) Any facility licensed as an alcoholism and substance abuse treatment facility in accordance with the requirements of 10 NCAC 14N .0100 through .0500 and 14N .0700, may provide DWI assessments.~~

~~(b) If the facility provides DWI assessments, it shall follow the rules set forth in 10 NCAC 18F .0312 through .0323.~~

Statutory Authority G.S. 20-179(m); 122C-26; 143B-14.

SECTION .0400 - PHYSICAL PLANT

.0401 CURRENTLY LICENSED FACILITIES

~~Facilities subject to licensure under G.S. 122C, Article 2 which are legally operating under a current license issued by DFS upon the effective date of this Rule shall be in compliance with all applicable portions of the North Carolina State Building Code in effect at the time the facility was constructed or last renovated. However, if alterations or additions are made to a facility, such alterations or additions shall be made in compliance with the provisions of Rules .0402 and .0403 of this Section.~~

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

.0402 FACILITY CONSTRUCTION/ ALTERATIONS/ADDITIONS

~~(a) When construction or use of a new facility is planned or when alterations or additions are planned for an existing~~

~~facility, work shall begin only after consultation with the DFS Construction Section, the local building official having jurisdiction, and the local fire official having jurisdiction.~~

~~(b) All required permits and approvals shall be obtained from the governing authorities having jurisdiction.~~

~~(c) Each facility shall be responsible for compliance with the Americans with Disabilities Act.~~

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

.0403 COMPLIANCE WITH BUILDING CODE REQUIREMENTS

~~(a) As used in this Rule the term "new facility" refers to any facility which has not been licensed previously as a mental health facility, and for which an initial license under G.S. 122C, Article 2 is being sought.~~

~~(b) In order to obtain a license to operate, each new facility shall be in compliance with the current North Carolina State Building Code as applicable to the specific service type and facility type, at time of issuance of license. The North Carolina State Building Code is incorporated by reference to include any subsequent amendments and editions of the referenced material. Copies of these Building Code Volumes may be purchased from the Department of Insurance Engineering Division located at 410 N. Boylan Avenue, Raleigh, N.C. 27603.~~

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

.0404 LOCATION OF FACILITY

~~(a) Each facility shall be located on a site where:~~

~~(1) fire protection is available;~~

~~(2) water supply and sewage and solid waste disposal services have been approved by the local health department;~~

~~(3) occupants are not exposed to undue hazards and pollutants; and~~

~~(4) local ordinances and zoning laws are met.~~

~~(b) The site at which a 24-hour facility is located shall have sufficient outdoor area to permit clients to exercise their right to outdoor activity in accordance with the provisions of G.S. 122C-62.~~

~~(c) Each new residential facility shall be located in a residential setting. Proximity to schools, shopping sites and recreational sites shall be considered in selecting the location.~~

Statutory Authority G.S. 122C-26; 122C-62; 143B-147.

.0405 FACILITY DESIGN AND EQUIPMENT

~~(a) Each facility shall be planned and equipped to provide the services offered, or to be offered, to clients in the facility.~~

~~(b) Facilities shall be designed and constructed in a manner that will provide clients privacy while bathing, dressing or using toilet facilities.~~

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

.0406 MAINTENANCE OF FACILITIES AND GROUNDS

~~Each facility and its grounds shall be maintained in a safe, clean, attractive and orderly manner and shall be kept free from offensive odor. Buildings shall be kept free from insects and rodents.~~

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

.0407 SAFETY PRECAUTIONS/ REQUIREMENTS

~~(a) Each facility shall have and implement specific policies which address usage, maintenance, supervision of, and safety precautions for, special client activity areas.~~

~~(b) Each facility shall be designed, constructed and equipped in a manner that ensures the physical safety of clients, staff and visitors.~~

~~(c) Each facility shall be kept free of hazards such as warped or damaged floors or floor coverings, cracked plaster, broken windows, damaged or worn stair treads or loose handrails.~~

~~(d) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times.~~

~~(e) All mattresses purchased for existing or new facilities shall be fire retardant.~~

~~(f) Electrical, mechanical and water systems shall be maintained in operating condition.~~

~~(g) Except for therapeutic (habilitative) camps and other 24-hour facilities for five or fewer clients, in each 24-hour facility heating and air cooling equipment shall be provided to maintain a comfort range between 68 and 80 degrees Fahrenheit. Facilities licensed prior to the effective date of this Rule shall not be required to add or install cooling equipment if not already installed. Facilities applying for initial licensure on or after the effective date of this Rule shall comply with these comfort range requirements as a condition of licensure.~~

~~(h) All indoor areas to which clients have routine access shall be well lighted. Lighting shall be adequate to permit occupants to comfortably engage in normal and appropriate daily activities such as reading, writing, working, sewing and grooming.~~

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

.0408 INDOOR LIVING SPACE: RESIDENTIAL/ 24-HOUR RESPITE FACILITIES

~~Mental health, mental retardation or other developmental disabilities or substance abuse facilities licensed prior to 10/01/88 shall satisfy the minimum square footage requirements in effect at the time of the facility's initial licensure. Residential facilities licensed since that date, except for Residential Therapeutic (Habilitative) Camps for Children and Adolescents which shall meet the requirements specified in 10 NCAC 14O .0302, shall meet the following indoor~~

~~space requirements:~~

~~(1) Client bedrooms shall have at least 100 square feet for single occupancy and 80 square feet per client when more than one client occupies the bedroom.~~

~~(2) Where bassinets and portable cribs for infants are used, a minimum of 40 square feet per bassinet or portable crib shall be provided.~~

~~(3) No more than two clients may share an individual bedroom regardless of bedroom size, except for Specialized Community Residential Centers for Individuals with Mental Retardation or other Developmental Disabilities which shall meet the requirements specified in 10 NCAC 14M .0104.~~

~~(4) In facilities with overnight accommodations for persons other than clients, with the exception of therapeutic homes for children and adolescents, such accommodations shall be separate from client bedrooms.~~

~~(5) No client shall be permitted to sleep in an unfinished basement or in an attic.~~

~~(6) In a residential facility licensed under residential building code standards and without elevators, bedrooms above or below the ground level shall be used only for individuals who are capable of moving up and down the steps independently.~~

~~(7) Minimum furnishings for client bedrooms shall include a separate bed, bedding, pillow, bedside table, and storage for personal belongings for each client.~~

~~(8) Only clients of the same sex may share a bedroom except for children age six or below and for married couples.~~

~~(9) Children and adolescents shall not share a bedroom with an adult.~~

~~(10) At least one full bathroom for each five or fewer persons including staff of the facility and their family shall be included in each facility.~~

~~(11) Each facility, except for a private home provider, shall have a reception area for clients and visitors and private space for interviews and conferences with clients.~~

~~(12) The living room, den, kitchen and dining space shall be available to meet the clients' needs.~~

~~(13) Each facility shall have indoor space for group activities and social gatherings.~~

~~(14) The area in which therapeutic and habilitative activities are routinely conducted shall be separate from sleeping areas.~~

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

SUBCHAPTER 14L - LICENSURE RULES FOR MENTAL HEALTH FACILITIES

SECTION .0100 - INPATIENT PSYCHIATRIC FACILITIES FOR INDIVIDUALS WHO ARE MENTALLY ILL

.0101 SCOPE

~~(a) Inpatient psychiatric facility is an inpatient service for the mentally ill which provides intensive 24 hour per day treatment in a hospital setting. Supportive nursing and medical care are provided under the supervision of a psychiatrist. This facility is designed to provide continuous treatment for individuals with acute psychiatric problems. Services may include psychological and medical diagnostic procedures; observation; treatment modalities including medication, psychotherapy, group therapy, occupational therapy, industrial therapy, vocational rehabilitation, recreation therapy and milieu treatment; medical care and treatment as needed; supportive services including education; and room and board. Inpatient psychiatric facility is the most intensive and restrictive type of facility for mentally ill individuals.~~

~~(b) The facility shall be designed to serve individuals who require continuous treatment for mental illness. Individuals who, in addition to mental illness, have other disorders, such as mental retardation or substance abuse, shall be eligible for admission if primarily in need of treatment for mental illness.~~

~~(c) The Rules in this Section apply to free standing psychiatric hospitals licensed under G.S. 122C, Article 2.~~

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

.0102 HOURS OF OPERATION

~~Each facility providing inpatient psychiatric services shall operate 24 hours per day, seven days per week, 12 months per year.~~

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

.0103 STAFF REQUIRED

~~(a) Staff coverage shall include at least one of each of the following: psychiatrist, licensed practicing psychologist, psychiatric social worker and psychiatric nurse.~~

~~(b) Physician coverage and the services of a qualified mental health professional shall be readily available by telephone or page and able to reach the facility within 30 minutes on a 24 hour per day basis.~~

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

.0104 PROFESSIONAL STAFF ORGANIZATION

~~(a) There shall be an organized professional staff that has overall responsibility for the quality of care provided.~~

~~(b) There shall be professional staff by laws that require, unless otherwise provided by law, that a licensed physician be responsible for diagnosis and all medical care and treatment.~~

~~(c) The professional staff by laws shall establish a process for delineation and reappraisal of clinical privileges.~~

~~(d) The professional staff by laws shall describe the specific role of each discipline represented on the professional staff or exercising clinical privileges.~~

~~(e) The professional by-laws shall specify mechanisms for the regular review, evaluation and monitoring of professional staff practices.~~

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

.0105 PLAN FOR SERVICES AND STAFF COMPOSITION

~~(a) Each facility shall have a written plan which clearly delineates the numbers and qualifications of its personnel as determined by at least the following:~~

~~(1) size of the facility;~~

~~(2) characteristics of the client population, such as whether children, adolescents, adults, elderly;~~

~~(3) clinical characteristics of the client population; and~~

~~(4) fundamental needs of the clients.~~

~~(b) The facility shall have a sufficient number of appropriately qualified clinical, administrative and support staff to assess and address the clinical needs of clients.~~

~~(c) Staff members shall have training or experience in the provision of care to mentally ill individuals in each of the age categories accepted for treatment, such as child, adolescent, adult, elderly.~~

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

.0106 STAFF DEVELOPMENT

~~Ongoing professional education shall be provided to keep the professional staff informed of significant clinical and administrative developments.~~

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

SECTION .0200 - RESIDENTIAL ACUTE TREATMENT FOR ADULT AND ELDERLY INDIVIDUALS WHO ARE MENTALLY ILL

.0201 SCOPE

~~(a) A residential acute treatment facility for adult and elderly individuals who are mentally ill is a residential facility which provides psychiatric care and treatment on a 24 hour basis in a nonhospital setting for individuals in crisis who need short term intensive evaluation, or treatment intervention or behavioral management to stabilize acute or crisis situations.~~

~~(b) This facility is designed as a time limited alternative to hospitalization for an individual in crisis.~~

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

.0202 HOURS OF OPERATION

~~Services shall be provided 24 hours per day, seven days per week, 12 months per year.~~

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

.0203 STAFF REQUIRED

~~(a) Staff supervision shall be provided by a qualified mental health professional.~~

~~(b) Staff with training and experience in the provision of care to acutely mentally ill persons shall be present at all times.~~

~~(c) A physician shall be on call on a 24 hour per day basis. The physician on call shall be a psychiatrist unless a psychiatrist is unavailable or for other good cause cannot be obtained. If the physician is not a psychiatrist, the physician shall be privileged to participate in diagnosis, treatment planning and admission and discharge decisions.~~

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

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

.0301 SCOPE

~~(a) A partial hospitalization facility is a day/night facility which provides a broad range of intensive and therapeutic approaches which may include group therapy, individual therapy, occupational, activity and recreational therapies, training in community living and specific coping skills, and medical services as needed primarily for acutely mentally ill individuals. This facility may be designed to prevent hospitalization or to serve as an interim step for those leaving a regional hospital. It may also be designed to increase the individual's ability to relate to others and function appropriately. This facility provides a medical component in a less restrictive setting than a hospital or a residential treatment or rehabilitation facility.~~

~~(b) Rules contained in this Section apply to all partial hospitalization facilities with the exception of Rules .0308 through .0310 of this Section which apply only to facilities serving minors.~~

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

.0302 HOURS OF OPERATION

~~Each partial hospitalization facility shall operate for a minimum of four hours per day (exclusive of transportation time), five days per week, 12 months per year.~~

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

.0303 PROVISION FOR CLASSROOM SPACE

~~Each facility offering on site educational programming shall have designated space for classroom activities.~~

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

.0304 STAFF REQUIRED: ADULTS AND MINORS

~~(a) Staff shall include at least one qualified mental health professional.~~

~~(b) Each facility serving minors shall have a program~~

~~director who has a minimum of two years' experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.~~

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

.0305 CLIENT/STAFF RATIO: MINORS

~~(a) A minimum of two staff members shall be present with minor clients at all times and a minimum ratio of one staff member to each eight or fewer minor clients shall be maintained.~~

~~(b) In the event that only one minor client is in the facility, only one staff member is required to be present.~~

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

.0306 ROLE OF PHYSICIAN

~~A physician shall participate in diagnosis, treatment planning, and admission and discharge decisions. This physician shall be a psychiatrist unless a psychiatrist is unavailable or for other good cause cannot be obtained. If the physician is not a psychiatrist, the physician shall be privileged to participate in diagnosis, treatment planning and admission and discharge decisions.~~

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

.0307 GROUP THERAPY

~~Group therapy shall be provided in each program by a qualified mental health professional.~~

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

.0308 TRAINING OF STAFF: FACILITIES SERVING MINORS

~~(a) Each facility serving minors shall provide or secure pre-service training for all staff.~~

~~(b) Each direct care staff assigned to the facility shall be trained to manage the clients individually and as a group.~~

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

.0310 SCHEDULE OF DAILY ACTIVITIES: FACILITIES SERVING MINORS

~~Each facility serving minors shall have a written schedule of daily activities posted in a place accessible to patients and staff.~~

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

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

.0401 SCOPE

~~A psychosocial rehabilitation facility is a day/night facility which provides skill development activities, educational services, and pre-vocational training and transitional employment services to individuals. Each facility is preferably organized around a separate and distinct community-based facility. Services are designed primarily to serve individuals who have impaired role functioning that adversely affects at least two of the following: employment, management of financial affairs, ability to procure needed public support services, appropriateness of social behavior, or activities of daily living. Assistance is also provided to members in organizing and developing their strengths and in establishing peer groups and community relationships.~~

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

.0402 HOURS OF OPERATION

~~Each facility shall operate for a minimum of five hours per day, five days per week, (exclusive of transportation time), 12 months per year.~~

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

.0403 STAFF REQUIRED

~~(a) Each facility shall have a designated program director.~~

~~(b) A minimum of one staff member to each eight or fewer clients in average attendance shall be maintained.~~

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

.0404 SKILLS DEVELOPMENT

~~Each facility shall provide skills development activities which include:~~

~~(1) community living, such as housekeeping, shopping, cooking, use of transportation facilities, money management;~~

~~(2) personal care such as health care, medication management, grooming;~~

~~(3) social relationships; and~~

~~(4) use of leisure time.~~

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

.0405 EDUCATIONAL SERVICES

~~(a) Each facility shall assist the client in securing needed education services such as adult basic education and special interest courses.~~

~~(b) Each facility offering on-site educational programming shall have designated space for classroom activities.~~

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

.0406 PREVOCATIONAL SERVICES

~~Each facility shall provide or secure prevocational services which focus on the development of positive work habits and participation in work activities.~~

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

.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) 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.~~

~~(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 .0600 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE MENTALLY ILL

.0601 SCOPE

~~(a) A residential treatment facility for children and adolescents is a facility which provides a structured living environment for children and adolescents who are primarily mentally ill and who may also be multi handicapped and for whom removal from home is essential to facilitate treatment. Services are designed to address the functioning level of the child or adolescent and includes training in language or communication skills, social relationships, and recreational skills. Some children or adolescents may be able to receive services in a day treatment facility, have a job placement, or attend public schools; for others, special education services may need to be offered within the residential setting. Different levels of residential treatment programs are provided to meet the individual needs of the children and adolescents placed in the facility.~~

~~(b) If the adolescent has his 18th birthday while receiving treatment in a residential facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.~~

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

.0602 CAPACITY

~~(a) Each facility shall serve no more than a total of 12 children and adolescents, except as set forth in Paragraphs (b) and (c) of this Rule.~~

~~(b) Any facility currently licensed as a Residential Treatment Facility under this Section on the effective date of this Rule, and providing services to more than a total of 12 children and adolescents, is exempt from the provision in Paragraph (a) of this Rule and may continue to provide services at no more than the facility's licensed capacity, providing that the capacity does not exceed 24.~~

~~(c) Any Child Caring Institution which is currently licensed by the Division of Social Services on the effective date of this Rule, may seek licensure as a Residential Treatment Facility as follows:~~

~~(1) the capacity of each residential unit in the Residential Treatment Facility shall be limited to 12 children and adolescents;~~

~~(2) each residential unit will be administered, staffed, and located to function separately from all other residential units in the facility; and~~

~~(3) the overall capacity shall be limited to the current capacity of the institution at the time of licensure as a Residential Treatment Facility.~~

~~(d) The two former Child Caring Institutions that are currently licensed as Residential Treatment Facilities under this Section on the effective date of this Rule shall be:~~

~~(1) exempt from the capacity limit of 24;~~

~~(2) exempt from the provisions in Subparagraphs (c)(1) and (2) of this Rule; and~~

~~(3) limited to the licensed capacity existing on July 1, 1993.~~

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

.0603 HOURS OF OPERATION

~~Each facility shall operate 24 hours per day, at least five days per week, at least 50 weeks per year, excluding legal holidays.~~

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

.0604 STAFF REQUIRED

~~Each facility shall have a director who has a minimum of~~

~~two years' experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.~~

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

.0605 CLIENT TO STAFF RATIO

~~(a) At all times, the following minimum child to staff ratios shall be in effect:~~

~~(1) one direct care staff member shall be present with each four children or adolescents; and~~

~~(2) if children or adolescents are cared for in separate buildings, the ratios shall apply to each building.~~

~~(b) When two or more clients are in the facility during waking and sleeping hours, the emergency on call staff shall be readily available by telephone or page and able to reach the program within 30 minutes.~~

~~(c) When only one child or adolescent is in the facility, a minimum of one staff member shall be on duty during waking and sleeping hours.~~

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

.0606 TRAINING OF STAFF

~~(a) Each facility shall provide or secure pre-service training for all staff.~~

~~(b) Each direct care staff member assigned to the facility shall be trained to manage the children or adolescents individually and as a group.~~

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

.0609 SUMMER PROGRAM

~~Staff shall provide or secure day programming for each child or adolescent whose educational service does not extend through the summer months.~~

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

.0611 PSYCHIATRIC/CLINICAL CONSULTATION

~~(a) Psychiatric consultation shall be available on an as needed basis to each client in the facility.~~

~~(b) Clinical consultation shall be provided by a qualified mental health professional to each facility at least twice a month.~~

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

.0612 SCHEDULE OF DAILY ACTIVITIES

~~(a) Each facility shall have a written schedule of daily activities posted in a place accessible to each child or adolescent and staff.~~

~~(b) Both free play and organized outdoor recreational activities shall be provided.~~

~~(c) Field trips and community experiences shall be coordinated with individual treatment plans.~~

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

.0613 RESIDENTS' PARTICIPATION IN HOUSEKEEPING ACTIVITIES

~~Each child or adolescent shall be involved in routine maintenance activities as is appropriate to his clinical need.~~

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

.0614 PERSONAL HYGIENE

~~Instruction shall be provided in good health practices pertaining to personal hygiene and grooming.~~

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

.0615 CLOTHING

~~Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.~~

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

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

.0701 SCOPE

~~(a) Day treatment is a day/night facility for children and adolescents who are emotionally disturbed which coordinates educational activities and intensive treatment while allowing the individual to live at home or in the community. This service is designed to increase ability of the child or adolescent to relate to others and function appropriately within the community while serving as an intervention to prevent hospitalization or placement outside the home or community. It provides a therapeutic environment as well as other activities which may include individual therapy, group therapy, recreational therapy, language communication skills development, social skills development, pre vocational service, vocational training, service to parents, and individual advocacy. The client's educational activities may be provided in this facility or in another educational setting, such as regular classes or special education programs within a normal school setting.~~

~~(b) If the adolescent has his 18th birthday while receiving treatment in a day treatment facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer. If an older client presents with needs developmentally characteristic of this age group, he may be considered for admission.~~

~~(c) Day treatment facilities may include before/after school and summer facilities, and early intervention.~~

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

.0702 EXCLUSIONS FROM LICENSURE

~~A day treatment facility shall be subject to licensure under~~

~~G.S. 122C, Article 2, unless excluded from licensure thereunder.~~

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

.0703 INDOOR ACTIVITY SPACE

~~The facility shall have indoor activity space.~~

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

.0704 OUTDOOR ACTIVITY SPACE

~~Outdoor activity space shall be provided. The outdoor space shall either be enclosed or offer protection through natural barriers or distance from dangerous conditions or situations.~~

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

.0705 STAFF REQUIRED

~~Each facility shall have a program director who has a minimum of two years' experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.~~

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

.0706 CLIENT/STAFF RATIO

~~(a) A minimum of two staff members shall be present with clients at all times except on occasions when only one client is in the program in which case only one staff member is required to be present.~~

~~(b) A minimum ratio of one staff member to each eight clients shall be maintained at all times.~~

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

.0707 TRAINING OF STAFF

~~(a) Each facility shall provide or secure pre-service training for all staff.~~

~~(b) Each direct care staff member assigned to the facility shall be trained to manage the clients individually and as a group.~~

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

.0708 TREATMENT PROGRAM

~~Each facility shall address the functioning level of the client and shall include at least training in language or communication skills, fine and gross motor skills, social relationship skills and recreational skills.~~

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

.0709 EDUCATIONAL PLACEMENT

~~The responsible local education agency shall approve the placement if the facility is a designated educational placement of the school age client.~~

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

.0711 PSYCHIATRIC CONSULTATION

~~Psychiatric consultation shall be available on an as needed basis to each client.~~

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

.0712 SCHEDULE OF DAILY ACTIVITIES

~~Each facility shall have a written schedule of daily activities posted in a place accessible to clients and staff.~~

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

.0101 SCOPE

~~A specialized community residential center is a facility which provides care, treatment and developmental training for mentally retarded or otherwise developmentally disabled, multi-handicapped individuals, children, adolescents, or adults, over an extended period of time, through integration of medical services and close supervision. The service is designed to assist each individual to attain his highest level of independent living skills while receiving care for his physical needs. This facility may be certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded (ICF/MR).~~

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

.0102 CAPACITY

~~Facilities beginning operation subsequent to the effective date of these rules shall be designed to serve no more than 30 clients at one location.~~

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

.0103 HOURS OF OPERATION

~~(a) Each facility shall operate 24 hours per day, seven days per week, 12 months per year.~~

~~(b) Waking and sleeping hours of the facility shall be designated and posted by the Program Director. The Program Director shall designate when the hours are in effect.~~

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

.0104 BEDROOM SPACE

~~No more than six infants or children and no more than four adults may share an individual bedroom regardless of bedroom size.~~

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

.0105 QUALIFICATIONS OF DIRECTOR

~~Each facility shall designate a director who holds a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or who has comparable experience and education.~~

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

.0106 NURSING STAFF

~~(a) At least one registered nurse or person certified as a licensed practical nurse shall be in the immediate area at all times.~~

~~(b) Each facility shall have access to the services of at least one registered nurse.~~

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

.0107 CLIENT TO STAFF RATIOS

~~(a) During waking hours, the following minimum client to staff ratios shall be in effect:~~

~~(1) regardless of the number of clients, a minimum of two direct care staff members shall be on duty in the building at all times;~~

~~(2) a minimum of one direct care staff member shall be on duty for each five clients; and~~

~~(3) if clients are cared for in separate buildings, the ratios shall apply to each building.~~

~~(b) During sleeping hours, the following minimum client to staff ratios shall be in effect:~~

~~(1) one direct care staff member shall be awake and on duty at all times and one other staff member shall be on call in the building;~~

~~(2) a minimum of one direct care staff member shall be on duty for each ten clients; and~~

~~(3) if clients are cared for in separate buildings, the ratios shall apply to each building.~~

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

.0108 MEDICAL CARE

~~Medical care shall be available on a 24 hour basis for each client. Such care shall be provided by a facility designated physician or by the client's private physician.~~

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

.0109 PERSONAL CARE

~~(a) Each client's personal hygiene needs shall be met daily.~~

~~(b) Toilet articles shall be made available to each client.~~

~~(c) Each client shall have a complete change of personal clothing at least daily.~~

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

.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 medical contraindication.~~

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

.0111 MEDICAL STATEMENT

~~(a) Each staff member who works directly and on a regularly scheduled basis with clients shall submit a medical statement from a licensed physician or an authorized health professional under the supervision of a physician to the facility at the time of initial approval and annually thereafter.~~

~~(b) The medical statement shall be in any written form and shall indicate the general physical and mental health of the individual and any restrictions required by G.S. 130A-144 to prevent the transmission within the facility of tuberculosis or any other communicable disease or condition that represents a significant risk of transmission within the facility.~~

~~(c) The facility shall keep the most recent medical statement on file.~~

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

.0112 PROVISION FOR INTERDISCIPLINARY SERVICES

~~Interdisciplinary services, including medical, nursing, dental, social work, physical therapy, language and communication therapy, education and psychology, shall be available to the facility.~~

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

~~(c) 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.~~

~~(d) 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 .0500 - SCHOOL YEAR: BEFORE/AFTER SCHOOL AND SUMMER DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0501 SCOPE

~~(a) Before/after school developmental day services for children with mental retardation or other developmental disabilities are day services which provide individual habilitative programming and recreational activities for school age children. Services are provided preceding and following the school day during the months of local school operation and are designed to meet developmental needs of the children as well as the child care needs of families. Before/after school services may be provided as a component of a developmental day center which serves preschool age children or may be provided as a separate component.~~

~~(b) Summer developmental day services for children with mental retardation or other developmental disabilities are day services which provide individual habilitative programming and recreational activities in a licensed child care center for school age children during the summer period when they are not participating in educational activities. This service is designed to promote continuing progress in acquiring developmental skills such as self help, fine and gross motor, language and communication, cognitive and social skills in order to facilitate functioning in a less restrictive environment. The service is also designed to meet child care needs of families.~~

~~(c) School year developmental day services for children with mental retardation or other developmental disabilities are day programs which provide individual habilitative programming for school age children during the school day throughout the school year when the local schools are in operation. The school age children are served under a contractual agreement with the local school system.~~

~~(d) The rules in this Section are applicable when:~~

~~(1) these services are provided as a separate free standing component which is not in the same facility as a developmental day center for preschool children licensed under G.S. 110, Article 7; and~~

~~(2) these services are offered for a total of four hours per day or less.~~

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

.0502 HOURS OF OPERATION

~~(a) Each before/after school developmental day service shall be available for a minimum of three hours per day (exclusive of transportation time), five days per week, during the months of local school operation.~~

~~(b) Each summer developmental day service shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, during the weeks in which local school operation is closed for summer break.~~

~~(c) Each school year developmental day service shall be available for a minimum of eight hours per day, five days per week during the months of local school operation.~~

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

.0503 CLASSROOM AND ACTIVITY SPACE

~~(a) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets and other fixed equipment.~~

~~(b) Space shall be available for small groups and individualized training as follows:~~

~~(1) Special interest areas shall be provided to enhance the development of each child.~~

~~(2) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.~~

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

.0504 OUTDOOR ACTIVITY SPACE

~~Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time. The outdoor space shall either be enclosed or offer protection through natural barriers or distance from potentially dangerous conditions or situations.~~

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

.0505 PROGRAM DIRECTOR

~~(a) Each developmental day center shall have a designated program director.~~

~~(b) The Program Director shall hold a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.~~

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

.0506 AGE OF STAFF

~~Each staff member except student trainees and supervised volunteers shall be at least 18 years of age and the Director shall be at least 21 years of age.~~

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

.0507 STAFF REQUIREMENTS

~~(a) Staff members 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 care staff member shall be on duty for each five children.~~

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

.0508 PARTICIPATION OF THE FAMILY OR LEGALLY RESPONSIBLE PERSON

~~The center shall provide or secure opportunities for the parent or the legally responsible person to attend individual or group activities.~~

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

.0509 DAILY TRAINING ACTIVITIES

~~(a) Daily training activities designed to meet the developmental needs of each child shall be scheduled and conducted.~~

~~(b) Activities shall be planned around the following principles:~~

~~(1) Group and individual activities, related to individual goal plans, shall be scheduled daily.~~

~~(2) Field trips and community experiences shall be coordinated with the goal plans for each child.~~

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

.0510 GROUPING OF CHILDREN

~~Grouping of children shall allow for attending to the individual needs of each child. The following principles shall be observed when grouping children:~~

~~(1) the younger the children, the smaller the group;~~

~~(2) the more delayed the children, the smaller the group;~~

~~(3) the greater the number of physically handicapped children, the smaller the group; and~~

~~(4) the wider the chronological age group, the smaller the group.~~

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

.0511 MEDICAL STATEMENT

~~(a) Each staff member who works directly and on a regularly scheduled basis with clients shall submit a medical statement from a licensed physician or an authorized health professional under the supervision of a physician to the facility at the time of initial approval and annually thereafter.~~

~~(b) The medical statement shall be in any written form and shall indicate the general physical and mental health of the individual and any restrictions required by G.S. 130A-144 to prevent the transmission within the facility of tuberculosis or any other communicable disease or conditions that represent a significant risk of transmission within the facility.~~

~~(c) The facility shall keep the most recent medical statement on file.~~

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

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

.0601 SCOPE

~~(a) An adult developmental activity program (ADAP) is a day/night service which provides organized developmental activities for adults with substantial mental retardation, severe physical disabilities or other substantial developmental disabilities to prepare the individual to live and work as independently as possible. The activities and services of an ADAP are designed to adhere to the principles of normalization and community integration aimed at increasing age appropriate actions, images and appearance of the individual.~~

~~(b) An ADAP offers a diverse variety of specific services and activities. These include vocational evaluation, vocational training, remunerative employment, personal and community living skill development, adult basic education and long term support, follow up and case management. Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided. The amount of time devoted to these areas varies considerably depending on the needs of the clients served.~~

~~(c) The Rules contained in this Section are applicable to three specific models of ADAP services as follows:~~

~~(1) ADAP — Facility Based. The majority of the ADAP activities in this model, whether vocational or developmental in nature, are carried out on the premises of a site specifically designed for this purpose.~~

~~(2) ADAP — Supported Employment. The only ADAP services provided by the operator are those related to supported employment. All of the training activities in this model occur at the location where the client actually works or lives, not in a specialized facility maintained by the~~

~~operator.~~

~~(3) ADAP - Supported Employment - Long-Term Support. Clients served in this model have successfully completed the intensive initial training phase of supported employment which is sponsored by and the responsibility of the Division for Vocational Rehabilitation Services. They are receiving those long-term support services which are targeted towards maintenance in the job and residential setting and independent functioning in the community. These are services which are the responsibility of the Division. Examples of such long-term support services include "refresher" vocational training to ensure that existing job skills are not lost, training in new job performance expectations, community living skill training, and consultation to other employees, employers, and families, and residential program staff.~~

~~(d) A single facility may operate more than one of these models. Rules .0602, .0604, .0606 and .0608 through .0617 of this Section are applicable to all three models. The remaining rules are applicable to the individual model as indicated in the rule. Whatever the model provided, it is the ADAP that is subject to licensure, not the location of the business or organization where the client is placed for work.~~

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

.0602 COMPLIANCE WITH OTHER RULES

~~An ADAP facility shall be subject to licensure under G.S. 122C, Article 2 unless provided by a facility subject to the rules of the North Carolina Division of Vocational Rehabilitation Services.~~

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

.0604 PHYSICAL PLANT REQUIREMENTS

~~(a) If the site is maintained by the ADAP, the following are applicable:~~

~~(1) Each site shall be inspected annually by an outside safety consultant with written documentation and follow-up on recommendations;~~

~~(2) Each site shall be designed and equipped to promote the training, employment and adult status of clients;~~

~~(3) Each work site shall eliminate architectural barriers which prohibit access to the building and use of equipment and facilities;~~

~~(4) Each site shall provide adequate toilet facilities and drinking fountains for clients; and~~

~~(5) Each site shall have designated space for classroom activities.~~

~~(b) If the site is maintained by another individual, business or organization, the ADAP shall determine that the site reflects safe working conditions for that client prior to and during placement of the client at the site.~~

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

.0606 PROGRAM DIRECTOR

~~(a) Each ADAP shall have a designated full-time program director.~~

~~(b) The Program Director shall be at least a high school graduate or equivalent with three years of experience in developmental disabilities programming.~~

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

.0608 CLIENT EVALUATOR

~~(a) Each facility shall have evaluation services available for all clients.~~

~~(b) Any person providing evaluation services shall have a high school diploma. Such person shall be approved for such responsibilities by the privileging procedures approved by the area authority or its contract agencies.~~

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

.0609 ACTIVITIES AND SERVICES

~~(a) ADAP activities and services shall be designed and implemented with adherence to the principles of normalization.~~

~~(b) Community integration activities shall be provided on an individual basis but in groups no larger than two to three persons whenever possible.~~

~~(c) Activities and services shall be aimed at increasing age-appropriate actions, images and appearance of the clients.~~

~~(d) Activities and services shall be directed toward the preparation of substantially handicapped adults to live as independently as possible.~~

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

.0610 SAFETY EDUCATIONAL PROGRAM

~~Each ADAP shall provide an ongoing educational program for staff and clients designed to teach them the principles of accident prevention and control of specific hazards. The program shall include training for clients in personal, work and environmental safety.~~

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

.0611 SAFETY COMMITTEE

~~If the site is maintained by the ADAP, the following are applicable:~~

~~(1) A safety committee comprised of staff members and clients shall be appointed to review accident reports and to monitor the ADAP for safety;~~

~~(2) The safety committee shall meet at least quarterly; and~~

~~(3) Minutes shall be kept of all meetings and submitted to the Program Director with recommendations for needed changes.~~

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

.0612 BUSINESS PRACTICES

~~(a) The following are applicable if the ADAP seeks or receives remuneration for goods or services provided to another individual, organization or business:~~

~~(1) Supplies, materials or tools, if provided by the ADAP, shall be identified as a separate amount in the bid price;~~

~~(2) Wages paid to ADAP clients shall be on a piece rate or hourly commensurate wage;~~

~~(3) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions; and~~

~~(4) Prices for goods produced in the ADAP shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).~~

~~(b) If the client is an employee of another individual, organization or business, the ADAP shall review client earnings information on at least an annual basis to ensure appropriateness of pay rates and amounts.~~

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

.0614 PROMOTION OF CLIENTS' RIGHTS

~~Clients shall be counseled concerning their rights and responsibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortuous or unethical conduct.~~

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

.0615 USE OF PUBLIC TRANSPORTATION BY CLIENTS

~~Clients served by the ADAP shall be encouraged to use public transportation or other non-facility transportation options, if available.~~

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

.0617 HANDBOOK

~~(a) Each ADAP shall have a client handbook including, but not limited to, information about services and activities.~~

~~(b) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.~~

~~(c) Each client shall be given a handbook, and the handbook shall be reviewed with the client.~~

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

.0618 FACILITY BASED ADAP: HOURS OF OPERATION

~~ADAP services shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week, 12 months per year unless closed in accordance with procedures outlined in the AREA PROGRAM BUDGETING AND PROCEDURES MANUAL, APSM 75-1.~~

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

.0619 FACILITY BASED ADAP: CLIENT/ STAFF RATIO

~~(a) Each ADAP shall maintain an overall direct service ratio of at least one full time or full time equivalent direct service staff member for each ten or fewer clients.~~

~~(b) For facilities having an approved supported employment conversion plan as defined in 10 NCAC 14K .0103, this standard will not apply for a maximum of ten clients or 20 percent of a facility's average daily enrollment, whichever is greater.~~

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

.0620 SUPPORTED EMPLOYMENT: CLIENT/ STAFF RATIO

~~(a) In group supported employment models, such as the mobile crew or enclave, each ADAP shall maintain an overall direct service ratio of at least one full time equivalent direct service staff member for each eight or fewer clients.~~

~~(b) In individual placement models, such as job coach, the amount of staff contact time per client shall be individualized based on client needs and goals as identified in the Individual Program Plan.~~

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

.0621 ADMISSIONS 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, social, and vocational histories.~~

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

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

SECTION .0700 - COMMUNITY RESPITE SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION: OTHER DEVELOPMENTAL DISABILITIES: DEVELOPMENTAL DELAYS OR AT RISK FOR THESE CONDITIONS

.0701 SCOPE

~~(a) Community respite is a support service which pro-~~

~~vides periodic relief for a family or family substitute on a temporary basis. While overnight care is available, community respite services may be provided for periods of less than 24 hours on a day or evening basis. Respite care may be provided by the following models requiring licensure under the provisions of G.S. 122C, Article 2:~~

~~(1) Center-based respite is a support service in which the individual is served at a designated facility which has potential for overnight care. While an overnight capacity is generally a part of this service, a respite center may provide respite services to individuals for periods of less than 24 hours on a day or evening basis.~~

~~(2) Private home respite is a support service in which the governing body provides respite services to individuals in the provider's home on an hourly or overnight basis directly or by contract.~~

~~(b) Private home respite services serving individuals with mental retardation, other developmental disabilities, developmental delays or those at risk for these conditions are subject to licensure under G.S. 122C, Article 2 when:~~

~~(1) more than two individuals are served concurrently; or~~

~~(2) either one or two children, two adults, or any combination thereof are served for a cumulative period of time exceeding 240 hours per calendar month.~~

Statutory Authority G.S. 122C-22(a)(8); 122C-26; 143B-147.

.0702 POPULATION SERVED

~~Each respite facility shall be designed to serve individuals with mental retardation or other developmental disabilities, developmental delays, atypical development or those at risk for these conditions.~~

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

.0703 PHYSICAL PLANT REQUIREMENTS

~~(a) A minimum of one ionized smoke detector wired into the house current shall be installed and centrally located. Additional smoke detectors that are not wired into the house current shall be checked at least monthly by the provider.~~

~~(b) A dry powder or CO(2) type fire extinguisher shall be located in the kitchen and shall be checked at least annually by the local fire department. Each provider of respite care shall receive instruction in its use prior to the initiation of service.~~

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

.0704 PROGRAM DIRECTOR

~~The Program Director shall be either:~~

~~(1) a graduate of a college or university with a four-year degree in human service related field; or~~

~~(2) a high school graduate or equivalent with at least three years of experience in human service programming.~~

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

.0705 AGE OF STAFF MEMBERS

~~The Program Director shall be at least 21 years of age. All other staff shall be at least 18 years of age except those who are 16 or 17 years of age and who are working directly under the supervision of an experienced employee.~~

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

.0706 FAMILY SERVICES COORDINATOR

~~At least one staff person of the respite service shall be designated to assist parents or the legally responsible person in making application for respite care, in detailing the service delivery plan for each respite episode, and in coordinating the activities of the service with family life.~~

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

.0707 PERSONAL CARE

~~Other than during short episodes of respite (less than 24 hours), activities of daily living common to non handicapped individuals shall be followed.~~

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

.0708 LENGTH OF STAY

~~Each governing body shall establish a written policy regarding the minimum and maximum lengths of service for each respite episode, as well as the frequency that individuals may use the service.~~

Statutory Authority G.S. 122C-117(a).

.0709 RESPITE ACTIVITIES

~~(a) Activities shall emphasize maturation of each child and independence of adults, supplementing the services being provided by other programs and by parents or the legally responsible person.~~

~~(b) Activities shall be planned daily and shall take into consideration the length of time each child should be scheduled for needed rest periods, the need for individual attention, and special limitations of activities and diet.~~

~~(c) Activities shall be designed to provide each child and adult with learning opportunities, recreation, reinforcement of self-help skills, language skills, socialization, motor coordination and methods which have been successful in other settings or are associated with the client's family life.~~

~~(d) Age appropriate recreational and learning materials shall be accessible to children and adults.~~

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

.0710 MEDICAL STATEMENT

~~(a) Each respite care provider, student intern, regular volunteer, substitute staff, or other individual who works directly and on a continual basis with clients shall submit a medical statement from a licensed physician at the time of initial approval and annually thereafter.~~

~~(b) The medical statement shall be in any written form and indicate the general physical and mental health of the individual and any restrictions required by G.S. 130A-144 to prevent the transmission within the facility of tuberculosis or any other communicable disease or condition that represents a significant risk of transmission within the facility.~~

~~(c) The service shall keep the most recent medical statement on file.~~

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

.0711 CENTER-BASED RESPITE: STAFF REQUIRED

~~(a) In a community center based respite which serves four or more clients, a minimum of two staff members shall be on duty, during waking hours, when five or fewer clients are in the facility. If more than five clients are being served, a minimum ratio of one staff member for each additional five or fewer clients shall be maintained.~~

~~(b) In a community center based respite which serves three or fewer clients, a minimum of two staff members shall be on duty, during waking hours, unless emergency backup procedures are sufficient to allow only one staff member on duty.~~

~~(c) During sleeping hours, a minimum of two staff members shall be available in the immediate area unless emergency backup procedures are sufficient to allow only one staff member on duty. In such instances, minimum acceptable emergency procedures shall include the following:~~

~~(1) written agreements with emergency medical transport services;~~

~~(2) availability of on-call emergency backup that can arrive at the facility within 20 minutes; and~~

~~(3) notification to parents or the legally responsible person that only one staff member may be on duty during sleeping hours.~~

~~(d) On occasions when only one client is in the facility, a minimum of one staff member shall be on duty during waking and sleeping hours.~~

~~(e) Each facility shall operate 24 hours per day, seven days per week, 12 months per year.~~

~~(f) Waking and sleeping hours of the facility shall be designated and posted by the Program Director. The Program Director shall designate when the hours are in effect.~~

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

.0712 CENTER-BASED RESPITE: CLIENT'S HEALTH

~~(a) Each client shall be observed by staff for signs of illness or injury at the beginning of each respite episode.~~

~~(b) Each client who becomes ill shall be separated from other clients until the client leaves the center or until it is determined that the client does not represent a significant risk for transmission of a communicable disease or condition within the facility.~~

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

.0713 PRIVATE HOME RESPITE: PROVIDER APPLICATION

~~Each governing body shall maintain an application for each provider at the facility where respite services are provided including the following:~~

~~(1) full name of each person living in the facility;~~

~~(2) place, telephone number and hours of employment for each individual at the facility who will be providing respite care;~~

~~(3) address, directions to, and telephone number of residence;~~

~~(4) sleeping arrangements for the respite client;~~

~~(5) preference of time when respite care can be provided;~~

~~(6) age preference of respite clients; and~~

~~(7) whether males and females can be served.~~

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

.0714 PRIVATE HOME RESPITE: PROVIDER TRAINING

~~Each facility providing respite care shall have at least one adult member who has completed the pre-service training program prescribed by the governing body. Training shall include a basic understanding of developmental disabilities, basic first aid and seizure management.~~

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

.0715 PRIVATE HOME RESPITE: AGREEMENT WITH PROVIDERS

~~(a) Unless outlined in a written job description for providers or in written policies and procedures, each governing body shall have a written agreement signed by each provider of private home respite care.~~

~~(b) The provisions of the agreement shall specify the responsibilities of the governing body and the provider including:~~

~~(1) confidentiality requirements;~~

~~(2) procedures for securing emergency services;~~

~~(3) program activities to be implemented;~~

~~(4) responsibilities for supervising the respite client;~~

~~(5) procedures related to administration of medications;~~

~~(6) participation in respite training programs;~~

~~(7) terms of compensation;~~

~~(8) client rights; and~~

~~(9) adherence to agency policies and procedures.~~

~~(c) A signed copy of the agreement shall be maintained by the governing body, and a signed copy shall be given to the provider.~~

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

.0716 PRIVATE HOME RESPITE: RESPONSIBILITIES OF GOVERNING BODY

~~(a) Each governing body shall:~~

~~(1) document efforts to match the provider's ability to provide respite care with the client's physical and developmental needs;~~

~~(2) make available to the provider instructions regarding duties and responsibilities which shall include, but need not be limited to:~~

~~(A) period of time for service to be provided;~~

~~(B) medications to be administered, and~~

~~(C) special dietary considerations; and~~

~~(3) provide each respite provider with a form for recording illness, accident, or medical concern, including administration of medication. Following each respite episode, this form shall be maintained by the governing body in the client's record.~~

~~(b) If the respite client is involved in a developmental or occupational program, the respite provider shall be provided written information regarding responsibilities for assuring that the client attends the program, and for structuring activities at the respite facility to enhance objectives established by the developmental or occupational program.~~

~~(c) At least one approved respite provider shall supervise the respite client at all times.~~

~~(d) The respite program director shall review with the provider the plan for emergency evacuation of the home prior to accepting respite clients~~

~~(e) Only the respite program director or his designee shall arrange respite care between the client's family and the respite provider.~~

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

SUBCHAPTER 14N - LICENSURE RULES FOR SUBSTANCE ABUSE FACILITIES

SECTION .0100 - INPATIENT HOSPITAL TREATMENT FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0101 SCOPE

~~Inpatient hospital treatment is an inpatient substance abuse facility which provides care, treatment and rehabilitation on a continuous, short term basis in an intensive, 24 hour per day hospital setting. These facilities are generally known as "28 day" facilities even though length of stay is not limited to 28 days. Counseling is provided with supportive nursing and medical care and treatment by other professionals as needed. If these facilities provide detoxification services, they shall comply with the applicable rules for detoxification in this Subchapter, Section 14N .0200 (NON HOSPITAL MEDICAL DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS), Section 14N .0300 (SOCIAL SETTING DETOXIFICATION FOR INDIVIDUALS WHO ARE ALCOHOLICS), and Section 14N .0400 (OUTPATIENT DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS) according to the type of detoxification offered. Inpatient hospital treatment facilities include the following:~~

~~(1) a substance abuse unit within a psychiatric hospital or an attached or free standing substance abuse unit of a psychiatric hospital licensed under the provisions of G.S. 122C, Article 2; and~~

~~(2) a free standing hospital specializing in substance abuse treatment licensed under the provisions of G.S. 122C, Article 2.~~

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

.0102 HOURS OF OPERATION

~~Each facility shall operate 24 hours per day, seven days per week, 12 months per year.~~

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

.0103 STAFFING REQUIREMENTS

~~(a) The facility shall have a designated medical director.~~

~~(b) A physician shall be present in the facility or on call 24 hours per day. The treatment of each client shall be under the supervision of a physician.~~

~~(c) The staff shall include a minimum of one full time certified alcoholism, drug abuse or substance abuse counselor for every ten or fewer clients. If the facility falls below this prescribed ratio and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.~~

~~(d) At least one registered nurse shall be on duty during each shift.~~

~~(e) At least two direct care staff members shall be on duty at all times. One direct care staff member for each 20 or fewer clients shall be on duty at all times in facilities serving adults. In facilities that serve minors, a minimum of one staff member for each five or fewer minor clients shall be on duty during the hours 7:00 a.m. to 11:00 p.m.~~

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

.0104 STAFF TRAINING

~~Each facility shall have and implement written policies and procedures for staff training. Requirements shall include the following.~~

~~(1) Each staff member shall have a training needs assessment completed annually and documented.~~

~~(2) Each staff member shall have a training plan completed annually and documentation of all training provided shall include the following:~~

~~(a) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

~~(b) Each direct care staff member in a facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.~~

~~(c) Each facility shall have at least one staff member on duty trained in each of the following:~~

~~(i) cardio pulmonary resuscitation;~~

~~(ii) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(iii) seizure management;~~

~~(iv) basic first aid;~~

~~(v) substance abuse withdrawal symptoms; and~~

~~(vi) symptoms of secondary complications to substance abuse.~~

~~(3) Attendance at training activities shall be documented for each staff member.~~

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

.0105 PROGRAM PLAN DESCRIPTION

~~Each facility shall have written policies and procedures which address both minors and adults and which specify the following:~~

~~(1) the philosophy of the treatment program;~~

~~(2) a statement of purpose for the facility, including its goals and objectives;~~

~~(3) a description of the services offered; the population served, including age groups and other relevant characteristics of the patient population; and the methods of delivering services (e.g., group therapy, didactic presentations, tapes, individual counseling);~~

~~(4) a daily schedule of therapeutic activities;~~

~~(5) a description of services offered for the family and significant others and how these individuals are involved in the treatment process; and~~

~~(6) a description of how the client and family members are linked in their home communities with Alcoholics Anonymous, Narcotics Anonymous, Al-Anon and other programs and referral sources.~~

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

.0106 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling emergency services. These procedures shall include provision for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.~~

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

.0107 MEDICAL AND PSYCHIATRIC CARE AND SERVICES

~~Medical and psychiatric care and services shall be provided according to the following:~~

~~(1) A physician who has at least two years' experience in the treatment of substance abuse shall be designated as the Medical Director of the program.~~

~~(2) The Medical Director shall have the overall responsibility for medical services; however, medical care and treatment of specific clients may be delegated to another physician on the professional staff of the program.~~

~~(3) Medical and psychiatric care and services or consultation shall be available to each client as needed.~~

~~(4) Detoxification services shall be provided as delineated in 10 NCAC 14N .0200 (NONHOSPITAL MEDICAL DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS), 10 NCAC 14N .0300 (SOCIAL SETTING DETOXIFICATION FOR INDIVIDUALS WHO ARE ALCOHOLICS), and 10 NCAC 14N .0400 (OUTPATIENT DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS) according to the type of detoxification services offered.~~

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

SECTION .0200 - NONHOSPITAL MEDICAL DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0201 SCOPE

~~Nonhospital medical detoxification is a residential facility which provides medical treatment and supportive services under the supervision of a physician. This facility is designed to withdraw an individual from alcohol or other drugs and to prepare him to enter a more extensive treatment and rehabilitation program.~~

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

.0202 HOURS OF OPERATION

~~Each facility shall operate 24 hours per day, seven days per week, 12 months per year.~~

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

.0203 STAFF REQUIRED

~~(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.~~

~~(b) The treatment of each client shall be under the supervision of a physician.~~

~~(c) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as needed basis to each client.~~

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

.0204 STAFF TRAINING

~~(a) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) monitoring of vital signs;~~

~~(2) basic first aid;~~

~~(3) cardio pulmonary resuscitation;~~

~~(4) seizure management;~~

~~(5) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(6) substance abuse withdrawal symptoms, including delirium tremens;~~

~~(7) medication education and administration; and~~

~~(8) symptoms of secondary complications to substance abuse.~~

~~(b) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

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

.0205 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provision for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.~~

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

.0206 MONITORING OF CLIENTS

~~Each facility shall have a written policy that requires the following:~~

~~(1) procedures for the monitoring of each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and~~

~~(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least every four hours for the first 24 hours and at least three times daily thereafter.~~

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

.0207 REFERRAL TO TREATMENT/ REHABILITATION FACILITY

~~The facility shall refer each client who has completed detoxification to an outpatient or residential treatment/rehabilitation facility.~~

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

SECTION .0300 - SOCIAL SETTING DETOXIFICATION FOR INDIVIDUALS WHO ARE ALCOHOLICS

.0301 SCOPE

~~Social setting detoxification is a residential facility which provides social support and other non medical services to individuals who are experiencing physical withdrawal primarily from alcohol. Individuals receiving this service need a structured residential setting but are not in need of physician services; however, back up physician services are available, if indicated. The facility is designed to assist individuals in the withdrawal process and to prepare them to enter a more extensive treatment and rehabilitation program.~~

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

.0302 HOURS OF OPERATION

~~Each facility shall operate 24 hours per day, seven days per week, 12 months per year.~~

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

.0303 STAFF REQUIRED

~~(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.~~

~~(b) The services of a certified alcoholism counselor or a certified substance abuse counselor shall be available on an as needed basis to each client.~~

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

.0304 STAFF TRAINING

~~(a) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) monitoring of vital signs;~~

~~(2) basic first aid;~~

~~(3) cardio pulmonary resuscitation;~~

~~(4) seizure management;~~

~~(5) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(6) alcohol withdrawal symptoms, including delirium tremens;~~

~~(7) medication education and administration; and~~

~~(8) symptoms of secondary complications to alcoholism.~~

~~(b) Each direct care staff member shall receive continuing~~

~~education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

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

.0305 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provision for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.~~

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

.0306 MONITORING OF CLIENTS

~~Each facility shall have a written policy that requires the following:~~

~~(1) procedures for the monitoring of each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and~~

~~(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least three times daily for the first 72 hours after admission.~~

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

.0307 REFERRAL TO TREATMENT/ REHABILITATION FACILITY

~~The facility shall refer each client who has completed detoxification to an outpatient or residential treatment or rehabilitation facility.~~

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

SECTION .0400 - OUTPATIENT DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0401 SCOPE

~~(a) Outpatient detoxification is a facility which provides periodic services involving the provision of supportive services, particularly active support systems such as family, Alcoholics Anonymous and Narcotics Anonymous, under the supervision of a physician for clients who are experiencing physical withdrawal from alcohol and other drugs.~~

~~(b) Outpatient methadone shall be exempt from the provisions of this Section but shall comply with the provisions delineated under 10 NCAC 14N .0800.~~

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

.0402 HOURS OF OPERATION

~~Each facility shall operate at least eight hours per day, for a minimum of five days per week, 12 months per year.~~

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

.0403 STAFF REQUIRED

~~(a) The treatment of each client shall be under the supervision of a physician.~~

~~(b) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as needed basis to each client.~~

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

.0404 STAFF TRAINING

~~(a) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) monitoring of vital signs;~~

~~(2) basic first aid;~~

~~(3) cardio pulmonary resuscitation;~~

~~(4) seizure management;~~

~~(5) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(6) substance abuse and other drug withdrawal symptoms, including delirium tremens;~~

~~(7) medication education and administration; and~~

~~(8) symptoms of secondary complications to substance abuse or drug addiction.~~

~~(b) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

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

.0405 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provision for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the service.~~

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

.0406 REFERRAL TO TREATMENT/ REHABILITATION FACILITY

~~The facility shall refer each client who has completed detoxification to an outpatient or residential treatment or rehabilitation facility.~~

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

SECTION .0500 - RESIDENTIAL TREATMENT/

REHABILITATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0501 SCOPE

~~A residential treatment or rehabilitation facility for alcohol or other drug abusers is a residential service which provides active treatment and a structured living environment for alcohol or other drug abusers in a group facility. Individuals must have been detoxified prior to entering the facility. The service is designed to enable the individual to return to an independent living situation within a specific time.~~

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

.0502 HOURS OF OPERATION

~~The facility shall provide services 24 hours per day, seven days per week, 12 months per year.~~

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

.0503 STAFF REQUIRED

~~As a minimum, the following staffing pattern shall be required:~~

~~(1) One full time certified alcoholism, drug abuse or substance abuse counselor shall be on staff for each 30 or fewer beds in a single facility.~~

~~(2) Facilities having 11 or more beds shall also add one full time qualified alcoholism, drug abuse or substance abuse professional or one full time certified alcoholism, drug abuse or substance abuse counselor for each ten bed increment or portion thereafter.~~

~~(3) The staffing requirements delineated in Paragraph (1) of this Rule shall be repeated for each additional 30 bed increment in a single facility.~~

~~(4) Any qualified alcoholism, drug abuse or substance abuse professional who is not certified shall become certified by the North Carolina Substance Abuse Professional Certification Board within 26 months following the effective date of this Rule, or from the date of employment, or from the date an unqualified person meets the requirements to be qualified, whichever is later.~~

~~(5) A minimum of one staff member shall be present in the facility when clients are present in the facility.~~

~~(6) In facilities that serve minors, a minimum of one staff member for each five or fewer minor clients shall be on duty during waking hours when minor clients are present.~~

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

.0504 STAFF TRAINING

~~(a) Each staff member shall have a training plan completed annually and documented along with documentation of attendance at training events.~~

~~(b) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) cardio pulmonary resuscitation;~~

~~(2) seizure management;~~

~~(3) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(4) basic first aid;~~

~~(5) alcohol and other drug withdrawal symptoms;~~

~~(6) medication education and administration; and~~

~~(7) symptoms of secondary complications to alcoholism and drug addiction.~~

~~(c) Each direct care staff member shall receive continuing education to include understanding of the nature of addition, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

~~(d) Each direct care staff member in a facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.~~

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

.0505 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provision for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.~~

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

.0506 TREATMENT/REHABILITATION SERVICES

~~Each facility shall provide or have access to the following services:~~

~~(1) individual, group or family therapy for each client;~~

~~(2) educational counseling;~~

~~(3) vocational counseling;~~

~~(4) job development and placement;~~

~~(5) money management;~~

~~(6) nutrition education; and~~

~~(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.~~

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

.0507 SCHEDULE OF ACTIVITIES

~~(a) The facility shall have a written schedule for daily routine activities.~~

~~(b) The facility shall establish a schedule for the provision of treatment and rehabilitation services.~~

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

SECTION .0700 - OUTPATIENT FACILITIES FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0701 SCOPE

~~Outpatient is a periodic service for individuals who abuse alcohol or other drugs. Outpatient services include individual, group, family, educational and vocational counseling.~~

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

.0703 STAFF REQUIRED

~~The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as needed basis to each client.~~

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

.0704 STAFF TRAINING

~~(a) Each facility staff member shall have a training plan completed annually and documented along with documentation of attendance at training events.~~

~~(b) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) cardio pulmonary resuscitation;~~

~~(2) seizure management;~~

~~(3) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~

~~(4) basic first aid;~~

~~(5) alcohol and other drug withdrawal symptoms;~~

~~(6) medication education and administration; and~~

~~(7) symptoms of secondary complications to alcoholism and drug addiction.~~

~~(c) Each direct care staff member shall receive continuing education to include understanding of the nature of addition, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

~~(d) Each direct care staff member in an outpatient facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.~~

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

.0705 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provisions for the following:~~

~~(1) immediate access to a physician;~~

~~(2) acute care hospital services; and~~

~~(3) assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.~~

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

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

.0801 SCOPE

~~(a) An outpatient methadone facility is a facility which provides periodic services designed to offer the individual an opportunity to effect constructive changes in his lifestyle by using methadone in conjunction with the provision of rehabilitation and medical services.~~

~~(b) Methadone is also a tool in the detoxification and rehabilitation process of a narcotic dependent individual. For the purpose of detoxification, methadone is used as a substitute narcotic drug; it is administered in decreasing doses for a period not to exceed 180 days. For individuals with a history of being physiologically addicted to a narcotic for at least one year before admission to the service, methadone may also be used in maintenance treatment. In these cases, it may be administered or dispensed in excess of 180 days at relatively stable dosage levels with the treatment goal of an eventual drug free state.~~

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.0802 HOURS OF OPERATION

~~Each facility shall operate seven days per week, 12 months per year. Daily, weekend and holiday medication dispensing hours shall be scheduled to meet the needs of the client.~~

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505.

.0803 COMPLIANCE WITH FDA/ NIDA REGULATIONS

~~(a) Each facility shall be approved by the Food and Drug Administration of the United State Department of Health and Human Services and shall be in compliance with all Food and Drug Administration/National Institute on Drug Abuse methadone regulations in 21 C.F.R. Part 2 § 291.505. These regulations are available from the Food and Drug Administration, Division of Methadone Monitoring (HFN 340), 5600 Fishers Lane, Rockville, Maryland 20857 at no cost.~~

~~(b) The material adopted by reference in this Rule is adopted in accordance with the provisions of G.S. 150B-14(c).~~

Statutory Authority G.S. 122C-26; 143B-147; 150B-14(c); 21 C.F.R. Part 2 § 291.505.

.0804 COMPLIANCE WITH DEA REGULATIONS

~~(a) Each facility shall be currently registered with the Federal Drug Enforcement Administration and shall be in~~

~~compliance with all Drug Enforcement Administration regulations pertaining to narcotic treatment programs codified in 21 C.F.R., Food and Drugs, Part 1300 to end. These regulations are available from the United States Government Printing Office, Washington, D.C. 20402 at a cost of four dollars and fifty cents ($4.50) per copy.~~

~~(b) The material adopted by reference in this Rule is adopted in accordance with the provisions of G.S. 150B-14(c).~~

Statutory Authority G.S. 122C-26; 143B-147; 150B-14(c); 21 C.F.R. Part 1300.

.0805 STAFF REQUIRED

~~A minimum of one certified drug abuse counselor or certified substance abuse counselor to each 50 clients shall be on the staff of the facility. If the facility falls below this prescribed ratio, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.~~

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

.0806 STAFF TRAINING

~~(a) Each facility shall have at least one staff member on duty trained in the following areas:~~

~~(1) basic first aid;~~
~~(2) cardio pulmonary resuscitation;~~
~~(3) seizure management;~~
~~(4) the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~
~~(5) drug abuse withdrawal symptoms;~~
~~(6) medication education; and~~
~~(7) symptoms of secondary complications to drug addiction.~~

~~(b) Each direct care staff member shall receive continuing education to include understanding of the nature of addition, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

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

.0807 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provisions for the following:~~

~~(1) immediate access to a physician;~~
~~(2) acute care hospital services; and~~
~~(3) assistance from a local ambulance service, rescue squad, or other trained medical personnel within 20 minutes of the facility.~~

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

.0808 TAKE-HOME SUPPLIES FOR HOLIDAYS

~~Take-home dosages of methadone for holidays shall be authorized by the facility physician on a case by case basis according to the following:~~

~~(1) An additional one day supply of methadone may be dispensed to each eligible client (regardless of time in treatment) for Independence Day, Thanksgiving, Christmas, New Year's and other official state holidays.~~

~~(2) No more than a three day supply of methadone may be dispensed to any eligible client because of holidays. This restriction shall not apply to a client who is receiving a six day take home supply of methadone.~~

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. § 291.505.

.0809 TREATMENT/REHABILITATION SERVICES

~~Each facility shall have staff to provide or secure the following services:~~

~~(1) individual, group or family therapy for each client;~~
~~(2) educational counseling;~~
~~(3) vocational counseling;~~
~~(4) job development and placement;~~
~~(5) money management;~~
~~(6) nutrition education; and~~
~~(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.~~

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

.0810 WITHDRAWAL FROM METHADONE

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

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

.0811 CLIENT DISCHARGE RESTRICTIONS

~~No client shall be discharged from the facility while physically dependent upon methadone unless the client is provided the opportunity to detoxify from the drug.~~

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

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

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

.0301 SCOPE

~~(a) A residential therapeutic (habilitative) camp is a residential treatment facility provided in a camping environment which is designed to help individuals develop behavior control, coping skills, self esteem and interpersonal skills. Services may include supervised peer interaction, provision of healthy adult role models, and supervised recreational, educational and therapeutic experiences.~~

~~(b) Each facility shall be designed to serve children and adolescents six through 17 years of age who are emotionally disturbed or who have mental retardation or other developmental disabilities.~~

~~(c) These Rules are not applicable to facilities designed primarily for recreational purposes or those subject to regulation by the N.C. Division of Youth Services.~~

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

.0302 BEDROOM/BATH FACILITIES

~~(a) All sleeping units shall provide at least the following space:~~

~~(1) 30 square feet per person;~~

~~(2) six feet between heads of sleepers; and~~

~~(3) 30 inches between sides of beds.~~

~~(b) A minimum of the following shall be provided:~~

~~(1) one shower head for each ten individuals;~~

~~(2) one flush toilet for each ten individuals; and~~

~~(3) one handwashing facility, adjacent to toilet facilities, for each 20 individuals.~~

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

.0303 EQUIPMENT AND SUPPLIES

~~(a) Gasoline, kerosene and other flammable materials shall be stored in covered safe containers plainly labeled as to content. Storage shall be in a well ventilated, secure location.~~

~~(b) All power tools, including mowers and trimmers, shall have safety mechanisms to prevent accidental engagement of power, shields for sharp edges, and shall be used according to manufacturer's instruction, maintained in good repair, and used only by those persons trained and experienced in their safety. When campers are using such equipment, a trained and responsible adult shall be present. All power tools shall be stored in a locked place not occupied by individuals when the tools are not in use.~~

~~(c) Fire extinguishers shall be available in all areas so designated by fire officials and shall be properly charged and have a current inspection label.~~

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

.0304 STAFF REQUIRED

~~(a) Each facility designed primarily to serve campers who are emotionally disturbed shall have a program director who has a minimum of two years' experience in child or adolescent mental health services, who has camping experience, and who has educational preparation in administrative, education, social work, nursing, psychology or a related field.~~

~~(b) Each facility designed primarily to serve campers who are mentally retarded or otherwise developmentally disabled shall have a program director who has a minimum of two years' experience in mental retardation or other developmental disability services, who has camping experience, and who has educational preparation in administration, education, social work, nursing, psychology or a related field.~~

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

.0305 DESIGNATED QUALIFIED PROFESSIONAL

~~Each client admitted to a facility shall be receiving services from a qualified mental health professional or qualified developmental disabilities professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.~~

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

.0306 STAFF/CAMPER RATIO

~~(a) A minimum of two staff members shall be on duty for every eight or fewer campers.~~

~~(b) The emergency on-call staff shall be readily available by page and able to reach campers within one hour.~~

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

.0307 STAFF AVAILABILITY

~~In accordance with the schedules developed by the Program Director, staff shall maintain the following distance from the campers:~~

~~(1) During waking hours, staff shall be within sight or voice range of the campers.~~

~~(2) During sleeping hours, staff shall be located within voice range of the campers.~~

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

.0308 TRAINING OF STAFF

~~(a) Staff assigned to the facility shall be trained to manage the children or adolescents individually and as a group.~~

~~(b) Each facility shall have at least one staff member trained in basic first aid, cardio pulmonary resuscitation, seizure management and the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions.~~

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

.0309 MEDICAL STATEMENT

~~(a) Each staff member who works directly and on a regularly scheduled basis with clients shall submit a medical statement from a licensed physician or an authorized health~~

~~professional under his supervision to the facility at the time of initial employment and annually thereafter.~~

~~(b) The medical statement shall be in any written form and shall indicate the general physical and mental health of the individual and any restrictions required by G.S. 130A-144 to prevent the transmission within the facility of tuberculosis or any other communicable disease or condition that represents a significant risk of transmission within the facility.~~

~~(c) The facility shall keep the most recent medical statement on file.~~

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

.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 in accordance with the needs of the client, as identified in the treatment/habilitation plan.~~

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

.0311 EMERGENCY MEDICAL TREATMENT

~~Emergency medical treatment shall be available within one hour of the facility.~~

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

.0312 PSYCHIATRIC CONSULTATION

~~Psychiatric consultation shall be available on an as needed basis to the facility.~~

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

.0313 SCHEDULE OF DAILY ACTIVITIES

~~Each facility shall have a written schedule of daily activities which shall be posted in a place accessible to children or adolescents and staff.~~

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

.0314 BASIC SAFETY

~~(a) Each facility shall develop and implement written policies and procedures on basic care and safety.~~

~~(b) The policies and procedures shall address at least the following:~~

~~(1) clothing suitable for existing weather conditions;~~
~~(2) cross ventilation in all sleeping units;~~
~~(3) bathing facilities with warm water;~~
~~(4) storage of flammable materials;~~
~~(5) use of tools and sharp instruments;~~
~~(6) use of cooking facilities and equipment; and~~
~~(7) beds or lockers no closer than five feet to any heating unit.~~

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

SECTION .0400 - THERAPEUTIC HOMES FOR CHILDREN AND ADOLESCENTS

.0401 SCOPE

~~(a) A therapeutic home is a residential facility primarily located in a private residence which provides professionally trained parent substitutes who work intensively with individuals in providing for their living, socialization, therapeutic and skill learning needs. The parent substitutes have skills and training above those of alternative family living service providers and receive close supervision and support from program staff. The facility may utilize services from a facility providing treatment services such as outpatient or day treatment.~~

~~(b) Services are designed to provide a healthy adult role model for both emotionally disturbed children and for those children who have substance abuse related problems. These services are provided in a home environment and utilize other treatment facilities.~~

~~(c) Each facility shall be designed primarily to serve either emotionally disturbed children and adolescents, those children and adolescents with substance abuse related problems, or both, under 18 years of age who need a therapeutic residential setting providing training and support toward the development of independent living skills.~~

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

.0402 CAPACITY

~~Each facility shall serve no more than two individuals.~~

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

.0403 HOURS OF OPERATION

~~Services shall be available for 24 hours per day during times when a client is in residence.~~

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

.0404 DESIGNATED QUALIFIED PROFESSIONAL

~~Each client admitted to a facility shall be receiving services from a qualified mental health professional or qualified substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.~~

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

.0405 STAFF/CLIENT RATIO

~~A minimum of one therapeutic home parent shall be present with clients at all times unless the designated qualified professional has documented in the individual client plan that the client may be without supervision in certain clearly delineated instances.~~

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

.0406 ADMISSION CRITERIA

~~(a) Admission to the facility shall be a joint decision of the designated qualified professional, the provider and the client or the legally responsible person.~~

~~(b) The client shall have the opportunity for at least one pre-admission visit to the facility except for an emergency admission.~~

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

.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. 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) There shall be a written agreement with the therapeutic home parent, which includes, but is not limited to, the following:~~

~~(1) the responsibility of the provider;~~

~~(2) confidentiality requirements; and~~

~~(3) responsibility and procedures for securing emergency services.~~

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

~~(c) A copy of the agreement shall be given to the therapeutic home parents.~~

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

.0409 COORDINATION OF TREATMENT AND EDUCATION

~~(a) The client's educational program shall be coordinated with his treatment/habilitation plan.~~

~~(b) Treatment providers and therapeutic home parents shall consult with teachers or principals regarding the client, as well as with juvenile court personnel and other relevant caretakers.~~

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

.0411 APPLICATION FOR THERAPEUTIC HOME PARENTS

~~Each program which provides services through contracts with the therapeutic home parents to serve clients in their home shall maintain an application file which includes:~~

~~(1) full name of each person living in the facility;~~

~~(2) names of family members responsible for client supervision and their supervision schedules; and~~

~~(3) address, directions to and telephone number of the facility.~~

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

.0412 CLINICAL CONSULTATION

~~(a) Clinical consultation to each facility shall be provided by a qualified mental health professional based on client needs if a mental health client resides in the facility.~~

~~(b) Clinical consultation shall be provided to each facility by a qualified alcoholism, drug abuse or substance abuse professional at least once a week if a substance abuser resides in the facility.~~

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

.0413 DAILY ACTIVITIES

~~Daily activities shall be as consistent as possible with the basic routines of the family, including individual and organization recreational activities, field trips and experiences within the community.~~

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

.0414 DAY PROGRAM

~~Each client shall participate in a day program designed to meet his educational, vocational and employment needs.~~

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

.0415 HOUSEKEEPING ACTIVITIES

~~Each client may be assigned to participate in routine housekeeping activities consistent with his age and clinical status.~~

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

.0416 PERSONAL HYGIENE

~~Each client shall be provided instruction in good health practices pertaining to personal hygiene and grooming.~~

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

SECTION .0500 - DAY ACTIVITY

.0501 SCOPE

~~Day activity is a day/night service which provides supervi-~~

~~sion and an organized program during a substantial part of the day in a group setting to adults and elderly individuals who are mentally ill or substance abusers. Participation may be on a scheduled or drop-in basis. The service is designed to support the individual's personal independence and promote social, physical and emotional well-being through activities such as social skills development, leisure activities, training in daily living skills, improvement of health status, and utilization of community resources.~~

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

.0502 HOURS OF OPERATION

~~Each day activity facility shall be available three or more hours a day on a regularly scheduled basis at least once a week.~~

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

.0503 STAFF REQUIRED

~~Each facility shall have at least one staff member on site at all times when clients are present in the facility.~~

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

.0504 DESIGNATED QUALIFIED PROFESSIONAL

~~Each client admitted to a facility shall be receiving services from a qualified mental health professional or qualified substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.~~

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

.0505 PLAN FOR PROGRAM ACTIVITIES

~~(a) Each day activity facility shall have planned activities which shall include one or more of the following:~~

~~(1) development of interpersonal skills;~~

~~(2) development of daily living skills such as meal preparation, money management, use of transportation, or leisure time;~~

~~(3) development of personal care skills such as grooming, health care or nutrition; and~~

~~(4) assistance with obtaining other needed services.~~

~~(b) Planned activities shall be designed to enhance the client's social, physical and emotional well-being.~~

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

SECTION .0600 - SHELTERED WORKSHOPS

.0601 SCOPE

~~(a) A sheltered workshop is a day/night service which provides work-oriented services including various combinations of evaluation, developmental skills training, vocational adjustment, job placement, and sheltered employment to individuals of all disability groups 16 years of age or over who have potential for gainful employment. This service is designed for individuals who have demonstrated that they do not require the intensive training and structure found in programs such as Adult Developmental Activity Programs (ADAP) but have not yet acquired the skills necessary for competitive employment. It provides the individual opportunity to acquire and maintain life skills including appropriate work habits, specific job skills, self help skills, socialization skills, and communication skills. This service focuses on productive work activities for individuals who have potential for gainful employment as determined by Vocational Rehabilitation Services or the ability to participate in a sheltered employment program. Sheltered workshops are subject to Department of Labor Federal Wage and Hour Guidelines for the Handicapped.~~

~~(b) The Rules in this Section specify licensure requirements applicable to sheltered workshops which serve individuals who are primarily mentally retarded or otherwise developmentally disabled; however, individuals with mental illness, substance abuse and severely physically disabled individuals may also be served within a sheltered workshop.~~

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

.0602 COMPLIANCE WITH OTHER RULES

~~Sheltered workshops which are subject to rules and regulations of the North Carolina Division of Vocational Rehabilitation Services shall not be subject to licensure under the provisions of G.S. 122C, Article 2.~~

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

.0603 HOURS OF OPERATION

~~Each facility shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week, 12 months per year.~~

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

.0604 PHYSICAL PLANT REQUIREMENTS

~~(a) Each facility shall be inspected annually by an outside safety consultant with written documentation and follow-up on recommendations.~~

~~(b) Each facility shall be designed and equipped to promote the training and adult status of clients.~~

~~(c) Each facility shall eliminate architectural barriers which prohibit access to the building and use of equipment and facilities.~~

~~(d) Each facility shall provide adequate toilet facilities and drinking fountains for clients.~~

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

.0605 PROVISION FOR CLASSROOM SPACE

~~Each facility shall have designated space for classroom activities.~~

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

.0606 PROGRAM DIRECTOR

~~(a) Each facility shall have a designated full-time program director.~~

~~(b) The Program Director shall have a baccalaureate degree with one year of experience in mental retardation or other developmental disability rehabilitation programming; be a high school graduate or equivalent with three years of experience in mental retardation or other developmental disability programming; or be a high school graduate or equivalent with three years of experience in business or personnel management.~~

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

.0607 PROGRAM COORDINATOR

~~(a) Each facility shall have a designated program coordinator.~~

~~(b) The program coordinator shall have a baccalaureate degree with one year of experience in mental retardation or other developmental disability programming or be a high school graduate or equivalent with three years of experience in mental retardation or other developmental disability programming.~~

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

.0608 CLIENT/STAFF RATIO

~~Each facility shall maintain an overall direct service ratio of at least one full-time or full-time equivalent direct care staff member for each ten or fewer clients.~~

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

.0609 CLIENT EVALUATOR

~~(a) At least one staff member shall be designated as a client evaluator.~~

~~(b) The client evaluator shall have at least a high school diploma, and shall have completed a five day inservice training program in the evaluation component of a licensed ADAP or sheltered workshop or in another training program approved by DMH/MR/SAS.~~

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

.0611 PROMOTION OF CLIENTS' RIGHTS

~~Clients shall be counseled concerning their rights and responsibilities as participants in the program in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortuous or unethical conduct.~~

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

.0612 USE OF PUBLIC TRANSPORTATION BY CLIENTS

~~Clients served by the facility shall be encouraged to use public transportation if available.~~

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

.0613 CLIENT HANDBOOK

~~(a) Each facility shall have a client handbook including, at a minimum, information about its services and activities.~~

~~(b) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.~~

~~(c) Each client shall be given a handbook and the handbook shall be reviewed with the client.~~

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

.0614 ACTIVITIES AND SERVICES

~~(a) Activities and services shall be designed and implemented with adherence to the principles of normalization.~~

~~(b) Activities shall be provided in groups designed to promote community integration.~~

~~(c) Activities and services shall be aimed at increasing age-appropriate actions, image and appearance of the clients.~~

~~(d) Activities and services shall be directed toward the preparation of the client to live as independently as possible.~~

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

.0615 BUSINESS PRACTICES

~~(a) Supplies, materials or tools, if provided by the sheltered workshop, shall be identified as a separate amount in the bid price.~~

~~(b) Wages paid to clients shall be on a piece rate or hourly commensurate wage.~~

~~(c) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions.~~

~~(d) Prices for goods produced in the facility shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).~~

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

.0617 SAFETY COMMITTEE

~~(a) A safety committee comprised of staff members and client representatives shall be appointed to review accident reports and to monitor the facility for safety.~~

~~(b) The safety committee shall meet at least quarterly.~~

~~(c) Minutes shall be kept of all meetings and submitted to the Program Director with recommendations for needed changes.~~

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

.0618 SAFETY EDUCATIONAL PROGRAM

~~Each facility shall provide an ongoing educational program~~

~~for staff and clients designed to teach them the principles of accident prevention and control of specific hazards.~~

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

SECTION .0700 - SUPERVISED LIVING

.0701 SCOPE

~~(a) Supervised living is the designation of a 24 hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or who have a substance abuse problem, and who require supervision when in the residence.~~

~~(b) A supervised living facility shall be licensed if the facility serves:~~

~~(1) one or more clients under the age of 18; or~~

~~(2) two or more adult clients.~~

Statutory Authority G.S. 143B-147.

.0702 HOURS OF OPERATION

~~Each facility shall be available to meet the needs of the clients 24 hours per day, 365 days per year.~~

Statutory Authority G.S. 143B-147.

.0703 CAPACITY

~~(a) A facility shall serve no more than three clients when:~~

~~(1) the client lives with a family; and~~

~~(2) the family provides the service.~~

~~(b) With the exception of Paragraph (a) of this Rule, a facility shall serve no more than six clients when the clients have mental illness or developmental disabilities.~~

~~(c) Any facility currently licensed on the effective date of this Rule, and providing services to more than six clients, may continue to provide services at no more than the facility's license capacity as of the effective date of this Rule. The currently licensed facilities serving more than six clients are:~~

~~(1) 10 NCAC 14L .0500, Group Homes for Adult and Elderly Individuals Who are Mentally Ill; and~~

~~(2) 10 NCAC 14M .0300, Group Homes for Adults with Mental Retardation or Other Developmental Disabilities.~~

Statutory Authority G.S. 143B-147.

.0704 STAFF REQUIREMENTS

~~(a) Staff client ratios shall be designed to provide staff to respond to individualized client needs.~~

~~(b) A minimum of one staff member shall be present at all times when any adult client is on the premises, except when approval has been given for the client to remain unsupervised in the home, and provided that:~~

~~(1) the client has been deemed capable of remaining in the home without supervision for a specified time by a qualified professional of the operating agency or area program; and~~

~~(2) the approval is documented in the client's record.~~

~~(c) Staff shall be present in a facility in the following client staff ratios when more than one child or adolescent client is present:~~

~~(1) children or adolescents with mental illness or emotional disturbance shall be served with one staff present for each four or fewer clients present;~~

~~(2) children or adolescents with substance abuse shall be served with a minimum of one staff present for each five or fewer minor clients present during waking hours; or~~

~~(3) children or adolescents with developmental disabilities shall be served with one staff present for each one to three clients present and two staff for each four or more clients present. However, only one staff member need be present during sleeping hours if emergency back up procedures are sufficient to allow only one staff member on duty.~~

Statutory Authority G.S. 143B-147.

.0705 SPECIAL STAFFING REQUIREMENTS

~~(a) In facilities which serve clients who are substance abusers:~~

~~(1) at least one staff member who is on duty shall be trained in alcohol and other drug withdrawal symptoms and symptoms of secondary complications to alcohol and other drug addiction;~~

~~(2) when the clients are minors, staff shall be trained in youth development and therapeutic techniques in working with youth; and~~

~~(3) the services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as needed basis for each client.~~

~~(b) In facilities which serve individuals with behavior disorders, in addition to developmental disabilities, the staff shall include at least one staff member who has received training in the area of behavior management through educational preparation in special education, psychology or a closely related field.~~

Statutory Authority G.S. 143B-147.

.0706 MEDICAL STATEMENT

~~(a) Each staff member who works directly with clients shall submit to the facility a medical statement that has been completed within 30 days of employment, from a licensed physician or an authorized health professional under the supervision of a physician and annually thereafter.~~

~~(b) The medical statement shall be in writing and shall indicate the general health of the individual and any restrictions required by G.S. 130A-144 to prevent the transmission, within the facility, of tuberculosis or any other communicable disease or condition that represents a significant risk of transmission within the facility.~~

~~(c) The facility shall keep the most recent medical statement on file.~~

Statutory Authority G.S. 143B-147.

.0707 SERVICE COORDINATION

~~Coordination shall be maintained between the facility operator and the qualified professional who is responsible for treatment/habilitation or case management.~~

Statutory Authority G.S. 143B-147.

.0708 PROGRAM ACTIVITIES

~~(a) Each client shall have the opportunity to participate in normal independent living activities.~~

~~(b) Each client shall be involved in treatment, rehabilitation, vocational, educational, employment, social and community activities on a regular basis in accordance with the needs of the client.~~

~~(c) For each client with a developmental disability, staff shall provide daily training activities in accordance with the client's needs.~~

Statutory Authority G.S. 143B-147.

.0709 CLIENT TRAINING IN HEALTH AND SAFETY

~~(a) Each adolescent and adult client shall receive training and be given opportunities to obtain independent living skills.~~

~~(b) Each client shall receive instructions in obtaining services in emergency situations.~~

Statutory Authority G.S. 143B-147.

.0710 PARTICIPATION OF THE FAMILY OR LEGALLY RESPONSIBLE PERSON

~~(a) Each client's family shall be provided the opportunity to maintain an ongoing relationship with their relative through such means as family visits to the facility and visits with the family outside the facility.~~

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

Statutory Authority G.S. 143B-147.

SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0100 - GENERAL INFORMATION

.0101 SCOPE

(a) This Subchapter sets forth Rules for mental health, developmental disability and substance abuse services, the facilities and contract agencies providing such services, and the area programs administering such services within the scope of G.S. 122C.

(b) These Rules and the applicable statutes govern licensing of facilities and accreditation of programs and services.

(1) Facilities are licensed by the Division of Facilities Services (DFS) in accordance with G.S. 122 and these Rules. Licensable facilities as defined in G.S. 122C-3 shall comply with these Rules to receive and maintain the licenses required by the statute.

(2) Area programs are accredited by the Division of Mental Health, Developmental Disability, and Substance Abuse Services (DMH/DD/SAS) on a service by service basis in accordance with these Rules. Area programs and their contract agencies shall comply with the Rules to maintain accreditation of their programs and services.

(c) Except as provided in Paragraph (d) of this Rule, when a facility or area program contracts with a person to provide services within the scope of these Rules, the facility or area program shall require that the contract services be provided in accordance with these Rules, and that the service provider be licensed if it is a licensable facility or accredited by the area program if it is a contract agency providing area program services.

(d) Fee-for-service contracts with an individual or group of individuals licensed under other provisions of state law do not require licensing or accreditation under this section, however, the contracts shall specify that services be documented as required by these Rules.

(e) These Rules are organized in the following manner:

(1) General Rules governing mental health, developmental disability and substance abuse services are contained in Sections .0100 through .0900. These Rules are "core" Rules that, unless otherwise specified, apply to all programs and facilities.

(2) Service-specific Rules are contained in Sections .1000 through .6900. Generally, Rules related to service-specific facilities and services are grouped:

(A) .1000 - .1900: Mental Health

(B) .2000 - .2900: Developmental Disabilities

(C) .3000 - .4900: Substance Abuse

(D) .5000 - .6900: Services and Facilities for More Than One Disability.

(3) Service-specific Rules may modify or expand the

requirements of core Rules.

(f) Failure to comply with these Rules shall be grounds for DFS to deny or revoke a license or for DMH/DD/SAS to deny or revoke area program service accreditation.

Statutory Authority G.S. 122C-23; 122C-24; 122C-26; 143B-147.

.0102 COPIES OF RULES

Copies of these Rules are available from DMH/DD/SAS at a price to cover printing, handling and postage.

Statutory Authority G.S. 122C-23; 122C-24; 122C-26; 143B-147.

.0103 GENERAL DEFINITIONS

(a) This Rule contains definitions that apply to all of the Rules in this Subchapter.

(b) Unless otherwise indicated, the following terms shall have the meanings specified:

(1) "Accreditation" means the designation given a service by DMH/DD/SAS, an area program, or an approved accreditation body, indicating compliance with the standards for accreditation established in these Rules.

(2) "Administering medication" means direct application of a drug to the body of a client by injection, inhalation, ingestion, or any other means.

(3) "Adolescent" means a minor from 13 through 17 years of age.

(4) "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.

(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 and which continues despite adverse consequences. The criteria for alcohol abuse delineated in the DSM IV published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition, is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(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. The criteria for alcohol dependence delineated in the DSM IV published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(7) "Area program" means a legally constituted public agency providing mental health, developmental disabilities 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.

(8) "Assessment" means a procedure for determining the nature and extent of the need for which the individual is seeking service.

(9) "Child" means a minor from birth through 12 years of age.

(10) "Children and adolescents with emotional disturbance" means minors from birth through 17 years of age who have behavioral, mental, or emotional problems which are severe enough to significantly impair their ability to function at home, in school, or in community settings.

(11) "Client" means the same as defined in G.S. 122C-3.

(12) "Client record" means a documented account, which may be written, computerized, etc., of all services provided a client from the time of admission of the client by the facility until discharge from the facility.

(13) "Commission" means the same as defined in G.S. 122C-3.

(14) "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.

(15) "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.

(16) "Detoxification" means the physiological withdrawal of an individual from alcohol or other drugs in order that the individual can participate in rehabilitation activities.

(17) "DFS" means the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.

(18) "Direct care staff" means an individual who provides active direct care, treatment, rehabilitation or habilitation services to clients.

(19) "Division Director" means the Director of

DMH/DD/SAS.

(20) "DMH/DD/SAS" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603.

(21) "Documentation" means provision of written or electronic, 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.

(22) "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 which continues despite adverse consequences. The criteria for drug abuse delineated in the - DSM IV published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($34.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(23) "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. The criteria for drug dependence delineated in the DSM IV published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($34.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(24) "DWI" means driving while impaired, as defined in G.S. 20-138.1.

(25) "Evaluation" means an assessment service which identifies the nature and extent of an individual's need, 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.

(26) "Facility" means the same as defined in G.S. 122C-3.

(27) "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.

(28) "Governing body" means, in the case of a corporation, the board of directors; in the case of an area authority, the area board; and in all other cases, the owner of the facility.

(29) "Habilitation" means the same as defined in G.S. 122C-3.

(30) "Hearing" means, unless otherwise specified, a contested case hearing under G.S. 150B, Article 3.

(31) "Infant" means an individual from birth to one year of age.

(32) "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.

(33) "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.

(34) "Legend drug" means a drug that cannot be dispensed without a prescription.

(35) "License" means a permit to operate a facility which is issued by DFS under G.S. 122C, Article 2.

(36) "Medication" means a substance recognized in the official "United States Pharmacopoeia" or "National Formulary" intended for use in the diagnosis, mitigation, treatment or prevention of disease.

(37) "Minor" 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.

(38) "Operator" means the designated agent of the governing body who is responsible for the management of a licensable facility.

(39) "Parent" means the legally responsible person unless otherwise clear from the context.

(40) "Periodic service" means a service provided on an episodic basis, either regularly or intermittently, through short, recurring visits for persons with mental illness, developmental disability or who are substance abusers.

(41) "Private facility" means a facility not operated

by or under contract with an area program.

(42) "Provider" means an individual, agency or organization that provides mental health, developmental disabilities or substance abuse services.

(43) "Rehabilitation" means training, care and specialized therapies undertaken to assist a client to reacquire or maximize any or all lost skills or functional abilities.

(44) "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 to the individual.

(45) "School aged children" means children from six through twenty-one years of age.

(46) "Screening" means a service which provides for a brief 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.

(47) "Secretary" means the Secretary of the Department of Human Resources or designee.

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

(49) "Service plan" means the same as treatment/habilitation plan defined in this Section.

(50) "Staff member" means any individual who is employed by the facility.

(51) "State facility" means the term as defined in G.S.122C.

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

(53) "System of care" means a spectrum of community based mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of emotionally disturbed children and adolescents.

(54) "Toddler" means an individual from one through two years of age.

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

(56) "Treatment/habilitation plan" means a plan in which one or more professionals, privileged in accordance with the governing body's policy, working with the client and 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. A treatment plan may also be called a service plan.

(57) "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.

.0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

(1) "Certified counselor" means a counselor who is certified as such by the North Carolina Counseling Association as Licensed Professional Counselors (LPC).

(2) "Certified alcoholism counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(3) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(4) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

(5) "Clinical" means having to do with the active direct treatment/habilitation of a client.

(6) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.

(7) "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.

(8) "Clinical social worker" means a social worker who is licensed as such by the N.C. Board of Social Work.

(9) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.

(10) "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.

(11) "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.

(12) "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.

(13) "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.

(14) "Qualified alcoholism professional" means an individual who is certified as such 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.

(15) "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 Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.

(16) "Qualified developmental disabilities professional" means an individual who is:

(a) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in developmental disabilities;

(b) a graduate of a college or university with a baccalaureate degree in a discipline related to developmental disabilities and at least two years of supervised habilitative experience in working with individuals with developmental disabilities; or

(c) a graduate of a college or university with a baccalaureate or advanced degree in a field other than one related to developmental disabilities and having three years of supervised experience in working with individuals with developmental disabilities.

(17) "Qualified drug abuse professional" means an individual who is:

(a) certified as such by the North Carolina Substance Abuse Professional Certification Board;

(b) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of drug abuse counseling; or

(c) 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.

(18) "Qualified mental health professional" means an individual who is:

(a) psychiatric nurse, practicing psychologist, or a psychiatric social worker;

(b) graduate of a college or university with an advanced degree in a related human service field and two years of supervised clinical experience in mental health services: or

(c) a graduate of a college or university with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.

(19) "Qualified substance abuse professional" means an individual who is:

(a) certified as such by the North Carolina Substance Abuse Professional Certification Board; or

(b) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of alcoholism and drug abuse counseling; or

(c) a graduate of a college or university with a baccalaureate 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.

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

SECTION .0200 - OPERATION AND MANAGEMENT RULES

.0201 GOVERNING BODY POLICIES

(a) The governing body responsible for each facility or service shall develop and implement written policies for the following:

(1) delegation of management authority for the operation of the facility and services;

(2) criteria for admission;

(3) criteria for discharge;

(4) admission assessments, including:

(A) who will perform the assessment; and

(B) time frames for completing assessment.

(5) client record management, including:

(A) persons authorized to document;

(B) screenings, which shall include:

(i) an assessment of the individual's presenting problem or need;

(ii) an assessment of whether or not the facility can provide services to address the

individual's needs; and

(iii) the disposition, including referrals and recommendations;

(C) transporting records;

(D) safeguard of records against loss, tampering, defacement or use by unauthorized persons;

(E) assurance of record accessibility to authorized users at all times; and

(F) assurance of confidentiality of records.

(6) quality assurance activities, including:

(A) composition and activities of a quality assurance committee;

(B) written quality assurance plan;

(C) methods for monitoring and evaluating the quality and appropriateness of client care, including delineation of client outcomes and utilization of services;

(D) professional or clinical supervision, including a requirement that staff who are not qualified professionals and provide direct client services shall be supervised by a qualified professional in that area of service;

(E) strategies for improving client care;

(F) review of staff qualifications and a determination made to grant treatment/habilitation privileges;

(G) review of all fatalities of clients who were being served in residential programs;

(7) use of medications by clients in accordance with the Rules in this Section;

(8) reporting of any incident, unusual occurrence or medication error;

(9) voluntary non-compensated work performed by a client;

(10) client fee assessment and collection practices;

(11) medical preparedness plan to be utilized in a medical emergency;

(12) authorization for and follow up of lab tests;

(13) transportation, including the accessibility of emergency information for a client;

(14) services of volunteers, including supervision and requirements for maintaining client confidentiality;

(15) areas in which staff receive training and continuing education;

(16) safety precautions and requirements for facility areas including special client activity areas; and

(17) client grievance policy, including procedures for review and disposition of client grievances.

(b) Minutes of the governing body shall be permanently maintained.

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

.0202 PERSONNEL REQUIREMENTS

(a) All facilities or services shall require that applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

(b) Staff of a facility or a service shall be currently licensed, registered or certified, as appropriate to the services which are provided in accordance with applicable NC State Laws.

(c) A personnel record shall be maintained for each individual employed indicating the training, experience, and other qualifications for the position, including verification appropriate to licensure, registration or certification.

(d) Continuing education shall be documented.

(e) Orientation programs shall be provided.

(f) Staff training shall include training in infectious diseases.

(g) At least one staff member in a facility who is trained in basic first aid, cardiopulmonary resuscitation, seizure management, and the Heimlich maneuver or other approved Red Cross first aid techniques for relieving airway obstruction shall be available at all times.

(h) The governing body may require medical statements. When in these Rules, a medical statement is required, the following minimums apply:

(1) The staff member shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician, nurse practitioner, or physician's assistant.

(2) The medical statement may be in any written form but shall be signed by the physician, nurse practitioner, or physician's assistant and indicate the general good physical and mental health of the individual and the lack of evidence of active tuberculosis and communicable diseases.

(3) The facility or program shall keep the most recent medical statement on file.

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

.0203 ASSESSMENT AND TREATMENT/ HABILITATION OR SERVICE PLAN

(a) An assessment shall be completed for a client, according to governing body policy, prior to the delivery of services, and shall include, but not be limited to:

(1) the client's presenting problem;

(2) the client's needs and strengths;

(3) a provisional or admitting diagnosis with an established diagnosis determined within 30 days of admission, except that a client admitted to a detoxification or other 24-hour medical program shall have an established diagnosis upon admission;

(4) a social, family, and medical history within 30 days; and

(5) evaluations or assessments, such as psychiatric, medical, and vocational, as appropriate to the client's needs.

(b) when services are provided prior to the establishment

and implementation of the comprehensive treatment/habilitation or service plan, treatment/habilitation or service objectives shall be documented.

(c) The treatment/habilitation or service plan shall be developed based on the assessment, and in partnership with the client or legally responsible person, within 30 days of admission for clients who are expected to receive services beyond 30 days.

(d) The treatment/habilitation or service plan shall include:

(1) time-specific measurable goals for treatment/habilitation or service delivery;

(2) strategies or procedures to meet the goals;

(3) staff responsible for the implementation of specific goals; and

(4) a schedule for review of the plan at least annually.

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

.0204 CLIENT RECORDS

A client record shall be maintained for each individual admitted to the facility, which shall contain, but need not be limited to:

(1) an identification face sheet which includes:

(a) name (last, first, middle, maiden);

(b) client record number;

(c) date of birth;

(d) race, sex and marital status;

(e) admission date;

(f) discharge date;

(2) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to Diagnostic and Statistical Manual for Mental Disorders (DSM-IV);

(3) documentation of the assessment and screening;

(4) treatment/habilitation plan;

(5) emergency information for each client which shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the client's preferred physician;

(6) a signed statement from the client or legally responsible person granting permission to seek emergency care from a hospital or physician;

(7) documentation of progress or observations;

(8) documentation of services provided to address the needs;

(9) if applicable:

(a) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);

(b) medication orders;

(c) orders and copies of lab tests; and

(d) documentation of medication and administration errors and adverse drug reactions.

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

.0205 EMERGENCY PLANS AND SUPPLIES

(a) A written fire and disaster plan shall be developed for each facility and shall be approved by the local fire authority.

(1) The plan shall be made available to all staff and evacuation procedures and routes shall be posted in the facility.

(2) Fire and disaster drills in a 24-hour facility shall be held at least quarterly and shall be repeated for each shift. Drills shall be conducted under conditions that simulate fire emergencies.

(b) Each facility shall have basic first aid supplies accessible for use.

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

.0206 CLIENT SERVICES

(a) Facilities that provide activities for clients shall assure that:

(1) space and supervision is provided to ensure the safety and welfare of the clients; and

(2) activities are suitable for the ages, interests, and treatment/habilitation needs of the clients served.

(b) Facilities or programs designated or described in these Rules as "24-hour" shall make services available 24 hours a day, every day in the year, unless otherwise specified in the Rule.

(c) Facilities that serve or prepare meals for clients shall ensure that the meals are nutritious.

(d) When clients who have a physical handicap are transported, the vehicle shall be equipped with secure adaptive equipment.

(e) When two or more preschool children who require special assistance with boarding or riding in a vehicle are transported in the same vehicle, there shall be one adult, other than the driver, to assist in supervision of the children.

Statutory Authority G.S. 122C-26; 122C-112; 122C-146; 130A-361; 143B-147; 150B-14(c).

.0207 MEDICATION REQUIREMENTS

(a) Medication dispensing:

(1) Medications shall be dispensed only on the written order of a physician or other practitioner licensed to prescribe.

(2) Dispensing is restricted to registered pharmacists, physicians, or other health care practitioners authorized by law and registered with the North Carolina Board of Pharmacy. A nurse or other designated person can assist with dispensing so long as the final label, container, and its contents are physically checked and approved by the dispensing pharmacist or physician.

(3) Methadone for take-home purposes may be supplied to a client of a methadone treatment service in a properly labeled container by a registered nurse employed by the service, pursuant to the requirements of 10 NCAC 45G .0306 SUPPLYING OF METHADONE IN TREATMENT PROGRAMS BY RN. Supplying of methadone is not considered dispensing.

(4) Other than for emergency use, facilities shall not possess a stock of prescription legend drugs for the purpose of dispensing without hiring a pharmacist and obtaining a permit from the NC Board of Pharmacy. Physicians are permitted to keep a small locked supply of prescription drug samples. Samples shall be dispensed, packaged, and labeled in accordance with state law and this Rule.

(b) Medication packaging and labeling:

(1) Non-prescription drug containers shall retain the manufacturer's label with expiration dates clearly visible;

(2) Prescription medications, whether purchased or obtained as samples, shall be dispensed in tamper-resistant packaging that will minimize the risk of accidental ingestion by children. Such packaging includes plastic or glass bottles/vials with tamper-resistant caps, or in the case of unit-of-use packaged drugs, a zip-lock plastic bag may be adequate;

(3) The packaging label of each prescription drug dispensed must include the following:

(A) the client's name;

(B) the prescriber's name;

(C) the current dispensing date;

(D) clear directions for self-administration;

(E) the name, strength, quantity, and expiration date of the prescribed drug; and

(F) the name, address, and phone number of the pharmacy or dispensing location (e.g., mh/dd/sa center), and the name of the dispensing practitioner.

(c) Medication administration:

(1) Prescription or non-prescription drugs shall only be administered to a client on the written order of a person authorized by law to prescribe drugs.

(2) Medications shall be self-administered by clients only when authorized in writing by the client's physician.

(3) medications, including injections, shall be administered only by licensed persons, or by unlicensed persons trained by a registered nurse, pharmacist or other legally qualified person and privileged to prepare and administer medications.

(4) A Medication Administration Record (MAR) of all drugs administered to each client must be kept current. Any administration of medications shall be recorded after administration, but before the next routine administration time, indicating each dose administered. The MAR is to include the following:

(A) client's name;

(B) name, strength, and quantity of the drug;

(C) instructions for administering drug;

(D) date and time drug is administered; and

(E) name or initials of person administering the drug.

(5) Drug administration errors and significant adverse drug reactions must be reported immediately to a physician or pharmacist. An entry of the drug administered and the drug reaction must be properly recorded in the drug record. A client's refusal of a drug must be charted.

(d) Medication disposal:

(1) All prescription and non-prescription medication shall be disposed of in a manner that guards against diversion or accidental ingestion.

(2) Non-controlled substances shall be disposed of by incineration, flushing into septic or sewer system, or by transfer to a local pharmacy for destruction. A record of the medication disposal shall be maintained by the program. Documentation shall specify the client's name, medication name, strength, quantity, disposal date and method, the signature of the person disposing of medication, and the person witnessing destruction.

(3) Controlled substances shall be disposed of in accordance with Chapter 90 of the North Carolina General Statutes.

(4) Upon discharge of a patient or resident, the remainder of his or her drug supply shall be disposed of promptly unless it is reasonably expected that the patient or resident shall return to the facility and in such case, the remaining drug supply should not be held for not more that 30 calendar days after the date of discharge.

(e) Medication Storage:

(1) All medication shall be stored:

(A) in a securely locked cabinet in a clean, well-lighted, ventilated room;

(B) in a refrigerator, if required. If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container;

(C) separately for each client;

(D) separately for external and internal use;

(E) in a secure manner if approved by a physician for a client to self-medicate.

(2) Each facility that maintains stocks of controlled substances shall be currently registered under the North Carolina Controlled Substances Act and shall be in compliance with Chapter 90 of the

North Carolina General Statutes, Article 5, North Carolina Controlled Substances Act adopted by reference to include any subsequent amendments or editions.

(f) Medication review:

(1) If the client receives psychotropic drugs, the governing body or operator is responsible for obtaining a review of each client's drug regimen at least every six months. The review is to be performed by a pharmacist or physician. The on-site manager must assure that the client's physician is informed of the results of the review when medical intervention is indicated.

(2) The findings of the drug regimen review should be recorded in the client record along with corrective action, if applicable.

(g) Medication education:

(1) Each client started or maintained on a medication by an area program physician shall receive either oral or written education regarding the prescribed medication by the physician or his/her designee. In instances where the ability of the client to understand the education is questionable, a responsible person shall be provided either oral or written instructions on behalf of the client.

(2) The medication education provided shall be sufficient to enable the client or other responsible person to safely administer the medication and to encourage compliance with the prescribed regimen.

(3) The area program physician or designee shall document in the client record that education for the prescribed psychotropic medication was offered and either provided or declined. If provided, it shall be documented in what manner it was provided (either orally or written or both) and to whom (client or responsible person).

Statutory Authority G.S. 90-21.5; 90-171.20(7) (8) ; 90-171.44; 122C-26; 143B-147.

.0208 RESEARCH REVIEW BOARD

(a) For purposes of this Rule, "research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove a hypothesis, or to explicate some principle or effect. The term "research" as used here 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.

(b) Prior to the initiation of any research activity in a facility which involves clients or client records, it shall be reviewed and approved by a research review board recognized by the facility in which the proposed research is to be conducted.

(c) The board shall consist of at least three members, the majority of whom are not directly associated with the research proposal which is under consideration.

(d) Each proposed research project shall be presented to the research review board as a written protocol including, at least, the following information:

(1) name of the project and the principal investigator;

(2) statement of objectives (hypothesis) and rationale; and

(3) description of the methodology, including informed consent if necessary.

(e) Each approved research project shall be reviewed by the research review board at least annually. Significant modifications in the research protocol shall be reviewed and approved in advance by the research review board.

(f) Minutes of each research board meeting shall be maintained.

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

SECTION .0300 - PHYSICAL PLANT RULES

.0301 COMPLIANCE WITH BUILDING CODES

(a) Each new facility shall be in compliance with all applicable portions of the North Carolina State Building Code in effect at the time of licensing.

(b) Each facility operating under a current license issued by DFS upon the effective date of this rule shall be in compliance with all applicable portions of the North Carolina State Building Code in effect at the time the facility was constructed or last renovated.

(c) Each facility shall maintain documented evidence of compliance with applicable fire, sanitation and building codes including an annual fire inspection.

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

.0302 FACILITY CONSTRUCTION/ALTERATIONS/ ADDITIONS

(a) When construction, use, alterations or additions are planned for a new or existing facility, work shall not begin until after consultation with the DFS Construction Section and with the local building and fire officials having jurisdiction.

(b) All required permits and approvals shall be obtained from the appropriate authorities.

(c) Each facility shall comply with the Americans with Disabilities Act.

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

.0303 LOCATION AND EXTERIOR REQUIREMENTS

(a) Each facility shall be located on a site where:

(1) fire protection is available;

(2) water supply, sewage and solid waste disposal services have been approved by the local health department;

(3) occupants are not exposed to undue hazards and pollutants; and

(4) local ordinances and zoning laws are met.

(b) The site at which a 24-hour facility is located shall have sufficient outdoor area to permit clients to exercise their right to outdoor activity in accordance with the provisions of G.S. 122C-62.

(c) Each facility and its grounds shall be maintained in a safe, clean, attractive and orderly manner and shall be kept free from offensive odor.

(d) Buildings shall be kept free from insects and rodents.

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

.0304 FACILITY DESIGN AND EQUIPMENT

(a) Privacy: Facilities shall be designed and constructed in a manner that will provide clients privacy while bathing, dressing or using toilet facilities.

(b) Safety: Each facility shall be designed, constructed and equipped in a manner that ensures the physical safety of clients, staff and visitors.

(1) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times.

(2) All mattresses purchased for existing or new facilities shall be fire retardant.

(3) Electrical, mechanical and water systems shall be maintained in operating condition.

(4) All indoor areas to which clients have routine access shall be well-lighted. Lighting shall be adequate to permit occupants to comfortably engage in normal and appropriate daily activities such as reading, writing, working, sewing and grooming.

(c) Comfort Zone: Each 24-hour facility shall provide heating and air-cooling equipment to maintain a comfort range between 68 and 80 degrees Fahrenheit.

(1) This requirement does not apply to therapeutic (habilitative) camps and other 24-hour facilities for five or fewer clients.

(2) Facilities licensed prior to 10/1/88 shall not be required to add or install cooling equipment if not already installed.

(d) Indoor space requirements: Facilities licensed prior to 10/1/88 shall satisfy the minimum square footage requirements in effect at that time. Unless otherwise provided in these Rules, residential facilities licensed after 10/01/88 shall meet the following indoor space requirements:

(1) Client bedrooms shall have at least 100 square feet for single occupancy and 80 square feet per client when more than one client occupies the bedroom.

(2) Where bassinets and portable cribs for infants are used, a minimum of 40 square feet per bassinet or portable crib shall be provided.

(3) No more than two clients may share an individual bedroom regardless of bedroom size.

(4) In facilities with overnight accommodations for persons other than clients, such accommodations shall be separate from client bedrooms.

(5) No client shall be permitted to sleep in an unfinished basement or in an attic.

(6) In a residential facility licensed under residential building code standards and without elevators, bedrooms above or below the ground level shall be used only for individuals who are capable of moving up and down the steps independently.

(7) Minimum furnishings for client bedrooms shall include a separate bed, bedding, pillow, bedside table, and storage for personal belongings for each client.

(8) Only clients of the same sex may share a bedroom except for children age six or below, and married couples.

(9) Children and adolescents shall not share a bedroom with an adult.

(10) At least one full bathroom for each five or fewer persons including staff of the facility and their family shall be included in each facility.

(11) Each facility, except for a private home provider, shall have a reception area for clients and visitors and private space for interviews and conferences with clients.

(12) The area in which therapeutic and habilitative activities are routinely conducted shall be separate from sleeping areas.

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

SECTION .0400 - LICENSING PROCEDURES

.0401 LICENSE REQUIRED

(a) No person shall establish, maintain or operate a licensable facility within the meaning of G.S. 122C-3 without first applying for and receiving a license from DFS.

(b) Except for facilities excluded from licensure by G.S. 122C, DFS will deem any facility licensable if its primary purpose is to provide services for the care, treatment, habilitation or rehabilitation of individuals with mental illness, developmental disabilities, or substance abuse disorders.

(c) Living arrangements coordinated for adult clients in connection with case management or personal assistance services are not considered licensable facilities unless they have the primary purpose of care, treatment, habilitation or rehabilitation.

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 143B-147.

.0402 LICENSE ISSUANCE

(a) Applications for licensure shall be requested and completed in the form specified by DFS at least thirty days prior to the planned operation date of a new facility. Copies of reports, findings or recommendations issued by any accreditation agency and corrective action plans shall be submitted with the application for licensure.

(b) The content of license applications shall include:

(1) Name of person (as defined in G.S. 122-C3) submitting the application;

(2) Business name of facility, if applicable;

(3) Street location of the facility (including multiple addresses if more than one building at one site);

(4) Name and title of the operator of the facility;

(5) Type of facility; services offered; ages served; and, when applicable, capacity and a floor plan showing bed locations and room numbers, any unlocked time-out rooms, and any locked interior or exterior doors which would prohibit free egress of clients; and

(6) Indication of whether the facility is operated by an area program, under contract with an area program, or is a private facility.

(c) DFS shall conduct an on-site inspection to determine compliance with all rules and statutes. If the facility is operated by or contracted with an area program, DFS may, in lieu of conducting an on-site inspection, accept written verification from the area program or DMH/DD/SAS that the facility is in compliance with rules and statutes. The written verification shall be in such form as DFS may require.

(d) DFS shall issue a license after it determines a facility is in compliance with:

(1) Certificate of Need rules as codified in 10 NCAC 3R .2600;

(2) Building Code and physical plant requirements in these Rules;

(3) Annual fire and safety and sanitation requirements, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and

(4) Applicable rules and statutes.

(e) Licenses shall be issued to the specific premise for types of services indicated on the application.

(f) A separate license shall be required for each facility which is maintained on a separate site, even though the sites may be under the same ownership or management.

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 122C-27(5); 143B-147.

.0403 DEEMED STATUS

(a) A facility may be awarded a deemed status and licensed if it is certified or accredited by a nationally recognized agency which has been approved in advance by the Commission, and it provides verification of certification or accreditation to DFS.

(b) Any facility licensed under this Rule shall continue to be subject to inspection by DFS or by DMH/DD/SAS as provided in these Rules.

Statutory Authority G.S. 122C-22; 122C-26; 131E-67; 143B-17; 143B-147; 150B, Article 3.

.0404 OPERATIONS DURING LICENSED PERIOD

(a) A license shall be valid for a period not to exceed two years from the date on which the license is issued.

(b) For all facilities providing periodic and day/night services, the license shall be posted in a prominent location accessible to public view within the licensed premises.

(c) For 24-hour facilities, the license shall be readily available for review upon request.

(d) A facility shall accept no more clients than the number for which it is licensed.

(e) DFS may conduct inspections of facilities without advance notice as DFS deems appropriate.

(f) Written notification must be submitted to DFS prior to any of the following:

(1) Construction of a new facility or any renovation of an existing facility;

(2) Increase or decrease in capacity by program service type;

(3) Change in program service;

(4) Change in ownership including any change in a partnership;

(5) Change of name of facility; or

(6) Change in location of facility.

(g) When a licensee plans to close a facility or discontinue a service, written notice at least 30 days in advance shall be provided to DFS. This notice shall address continuity of services to clients in the facility.

(h) Licenses will expire unless renewed by DFS for an additional period. Thirty days prior to the expiration of a license, the licensee shall submit to DFS the following information:

(1) Brief description of any changes in the facility since the last written notification was submitted;

(2) Annual local fire and sanitation inspection reports, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and

(3) Copies of deficiencies and corrective action issued by an area program, DMH/DD/SAS, or any accreditation agency.

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

.0405 LICENSE DENIAL, AMENDMENT OR REVOCATION

(a) Denial: DFS may deny an application for license based on the determination that the applicant is not in compliance with:

(1) rules promulgated under G.S. Chapter 122C, Article 2; or

(2) applicable provisions of the Certificate of Need law under G.S. Chapter 131E, Article 9 and rules adopted under that law.

(b) Notice: When an application for license of a new facility is denied:

(1) DFS shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and

(2) The facility shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: DFS may amend a license to indicate a provisional status whenever DFS determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served.

(1) Provisional status shall be approved for not less than 30 days nor more than six months.

(2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.

(3) A new license, which deletes the provisional status, shall be issued when a facility is determined by DFS to be in compliance with applicable rules.

(4) If a facility fails to comply with the rules within the time frame determined by DFS, the license will automatically terminate on the expiration date of the provisional status.

(5) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless DFS determines that the violations have been corrected.

(6) A decision to issue a provisional status is stayed during the period of an administrative appeal and the licensee may continue to display its license during the appeal.

(d) Revocation: DFS shall revoke a license whenever it finds that there has been any failure to comply with the provisions for G.S. 122C, Article 2, that there have been violations of rules promulgated under those parts, and that such violations endanger the health, safety, or welfare of the individuals in the facility.

Statutory Authority G.S. 122C-24; 122C-26; 122C-27; 143B-147; 150B-3; 12(a); 23-(a)(f); 150B-45.

SECTION .0500 - AREA PROGRAM REQUIREMENTS

.0501 REQUIRED SERVICES

Each area program shall provide or contract for the provision of the following services:

(1) Outpatient for Individuals of all Disability Groups;

(2) Emergency for Individuals of all Disability Groups;

(3) Consultation & Education for Individuals of all Disability Groups;

(4) Case Management for Individuals of all Disability Groups;

(5) Inpatient Hospital Treatment for Individuals Who Have Mental Illness or Substance Abuse Disorders;

(6) Psychosocial Rehabilitation for Individuals with Severe and Persistent Mental Illness or Partial Hospitalization Services for Individuals Who are Acutely Mentally Ill;

(7) Developmental Day Services for Preschool Children with or at Risk for Developmental Disabilities or Delays or Atypical Development;

(8) Adult Developmental Activity Programs (ADAP) for Individuals with Developmental Disabilities;

(9) Alcohol and Drug Education Traffic Schools (ADETS);

(10) Drug Education Schools (DES);

(11) Social Setting, Nonhospital Medical, or Outpatient Detoxification Services for Individuals who are Alcoholics;

(12) Forensic Screening and Evaluation for Individuals of all Disability Groups; and

(13) Early Childhood Intervention Services for Children with or at Risk for Developmental Delay, Disabilities, or Atypical Development and Their Families (ECIS).

Statutory Authority G.S. 143B-147.

.0502 AREA PROGRAM/HOSPITAL AGREEMENT

(a) Each area program shall make provisions for inpatient services for individuals with mental illness or substance abuse disorders, including access for both voluntary and involuntary admissions. The area program may provide these services, develop written agreements, or have written referral procedures to a general hospital or private hospital, to ensure that both voluntary and involuntary clients shall have access to needed inpatient services.

(b) A written agreement between the area program and a general hospital or private hospital 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.

(c) When services are provided out of State, the written agreement shall be approved by the DMH/DD/SAS.

Statutory Authority G.S. 143B-147.

.0503 STAFF REQUIREMENTS

Each area program shall employ or contract for the services of a:

(1) psychiatrist;

(2) practicing psychologist;

(3) psychiatric nurse;

(4) psychiatric social worker;

(5) certified alcoholism counselor and certified drug abuse counselor, or at least one certified substance abuse counselor;

(6) qualified developmental disabilities professional; and

(7) qualified client record manager.

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

.0504 CLIENT RIGHTS COMMITTEE

(a) The area board shall bear ultimate responsibility for the assurance of client rights.

(b) Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop 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) rules of conduct for meetings and voting procedures to be followed;

(5) procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;

(6) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and

(7) other operating procedures.

(c) The area-board-established Client Rights Committee shall oversee, for area-operated services, implementation of the following client rights protections:

(1) compliance with G.S. 122C, Article 3;

(2) compliance with the provisions of DMH/DD/SAS publications CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2 and CONFIDENTIALITY RULES, APSM 45-1, 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 a client, client advocate, parent, legally responsible person, 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.

(d) 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.

(e) If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry out the provisions of this Rule for the contract agency.

(f) Each Client Rights Committee shall be composed of a majority of non-area board members, with a reasonable effort made to have all disabilities equally represented. Staff who serve on the committee shall not be voting members.

(g) 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 minutes or in written or oral reports.

(h) An area program which contracts for services shall delineate in the service contract the authority of the area board Client Rights Committee and its relationship to the contract agency. The area board Client Rights Committee shall review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any, made by the contract agency shall be reported to the area board within 90 days of the initial report of the incident.

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

.0505 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES

(a) If an area program plans to operate or contract for a service located within the catchment area of another area program, the Director of the area program that plans to operate or contract for the service shall notify the Director of the area program in which the service is to be located prior to the provision of the service.

(b) The notification shall be in writing and shall include the following:

(1) name of the provider;

(2) service to be provided; and

(3) anticipated dates of service.

In the event of an emergency, notification prior to the provision of service may be by telephone with written notification occurring the next working day.

(c) Should a dispute resolution concerning such service as described in Paragraph (a) of this Rule be necessary, the Division Director shall arbitrate an agreement between the respective area programs.

(d) If the Division plans to operate or contract for a service in an area program, the Division Director shall notify the Director of the area program in which the service is to be located, prior to the provision of the service, according to the procedures set forth in Paragraph (b) of this Rule.

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

SECTION .0600 - ACCREDITATION OF AREA PROGRAMS AND SERVICES

.0601 GENERAL

(a) All area program direct and contracted services shall be accredited. Direct area program services shall be accredited by DMH/DD/SAS. Contract services shall be accredited by the area program.

(b) Initial accreditation shall include an on-site review by the accrediting authority. Continuing accreditation shall be maintained by periodic accreditation reviews of area services.

(c) DMH/DD/SAS funding of area services is contingent upon accreditation. For new services, DMH/DD/SAS may authorize start-up funds pending accreditation.

(d) DMH/DD/SAS or the area program, as appropriate, may deem a service accredited if the service provides proof that it is certified or accredited by a nationally recognized body approved in advance by DMH/DD/SAS.

(e) DMH/DD/SAS shall retain the authority to revoke or deny accreditation of area program contract services, with or without the concurrence of the area program, as set forth in Rule .0604 of this Section.

Statutory Authority G.S. 122C-112; 1222C-141(b); 122C-142(a); 122C-191(d).

.0602 ACCREDITATION REVIEW

(a) The Area Authority shall assure that all area-operated and contracted services of an area program comply with applicable Federal requirements, General Statutes, and Rules of the Commission, the Secretary and DMH/DD/SAS.

(b) An area program shall be reviewed under the auspices of DMH/DD/SAS periodically, and not less than once every five years.

(c) The Accreditation Review will examine each area program service for:

(1) compliance with applicable rules;

(2) client outcomes;

(3) achieved levels of client satisfaction; and

(4) operational and programmatic performance meeting professional standards of practice in the applicable disciplines.

(d) Upon completion of the Accreditation Review, DMH/DD/SAS will provide the area authority with an oral summary and written report of results.

Statutory Authority G.S. 122C-112; 1222C-141(b); 122C-142(a); 122C-191(d).

.0603 ACCREDITATION OF THE AREA PROGRAM

(a) Upon completion of an Accreditation Review, DMH/DD/SAS shall accredit the area program for a period of between one and five years. The length of the accreditation period shall be determined by DMH/DD/SAS based on the results of the review and an evaluation of the area program's current status, planned changes, and anticipated future needs.

(b) Except as specified by DMH/DD/SAS, accreditation of an area program shall constitute accreditation of the area program services that were in operation at the time of the Accreditation Review. DMH/DD/SAS may accredit an area program service for a shorter period of time than the area program itself.

(c) An area program or service accreditation of one year shall be accompanied by the development of a plan for program or service enhancement developed jointly by the area program and DMH/DD/SAS. These plans are to be developed and implementation begun within ninety days following the accreditation review.

(d) As a condition of accreditation for more than one year, DMH/DD/SAS may require an area program to develop and submit a plan for program or service enhancement. The scope and time frame for submission of the plan shall be specified by DMH/DD/SAS.

(e) DMH/DD/SAS may schedule and conduct Accreditation Reviews at any time during an accreditation period in the event of significant changes in the membership of the area board, a change in area director, complaints by consumers, consumer organizations and/or advocacy groups, failure to complete required plans, or other occurrences that suggest a change in circumstances warranting a reexamination of one or more of an area program's services. This review may be a full Accreditation Review of the area program, or it may be limited to selected area program services.

Statutory Authority G.S. 122C-112; 1222C-141(b); 122C-142(a); 122C-191(d).

.0604 DENIAL OR REVOCATION OF ACCREDITATION

(a) Either DMH/DD/SAS or an area program may deny or revoke accreditation for a service:

(1) upon confirmation that a service subject to licensure is not licensed;

(2) upon receipt of evidence of a condition that DMH/DD/SAS or the area program determines is a threat to the health, safety or welfare of an individual served;

(3) upon a service's failure to complete corrective action in accordance with a plan approved by DMH/DD/SAS or the area program as appropriate;

(4) upon a service's failure to participate in the Accreditation Review; or

(5) upon determination that:

(A) the services rendered are not provided at a recognized, established level of competence in the appropriate discipline;

(B) the governing body of the service provider has received notice of the deficiencies; and

(C) the governing body has failed or refused to take appropriate remedial action to bring the service to the required level of competence.

(b) The area program shall promptly notify DMH/DD/SAS of any revocation or denial of accreditation for a service.

(c) Upon denial or revocation of accreditation for a service, DMH/DD/SAS shall take appropriate steps to withhold funds for the service pending reaccreditation as set forth in the DMH/DD/SAS Accounting Rules.

Statutory Authority G.S. 122C-112; 1222C-141(b); 122C-142(a); 122C-191(d).

SECTION .0700 - WAIVERS AND APPEALS

.0701 SUBMISSION OF REQUESTS FOR WAIVERS OF RULES

Requests for waivers shall be sent to the Division Director, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27603.

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0702 CONTENTS OF WAIVER REQUESTS

Except as provided in Rule .0706 of this Section, waiver requests shall be in writing and shall contain:

(1) the name, address and telephone number of the person making the request;

(2) the name, address and telephone number of the facility, program, agency or other entity for which the waiver is requested;

(3) the rule number and title of any rule for which the waiver is requested;

(4) a statement of facts including:

(a) the reason for the request;

(b) the nature and extent of the request; and

(c) confirmation that the health, safety or welfare of clients will not be threatened;

(5) the time frame for which the waiver is requested; and

(6) authorization for the waiver request and the date of such authorization. If from:

(a) a facility operated by an area program, area board authorization;

(b) a contract agency (of area programs) proof of recommendation by area board and proof of contract agency governing body approval;

(c) a private facility, authorization by the governing body; and

(d) the Department of Correction, Division of Prisons, authorization by the Director of the Division of Prisons.

Statutory Authority G.S. 122C-112(a)(8); 143B-147(a)(8).

.0703 PROCEDURE FOR WAIVERS BY COMMISSION

If any rule for which waiver is requested was adopted pursuant to the rule-making authority of the Commission, the procedures set forth in this Rule shall be followed:

(1) The person requesting the waiver shall be notified regarding the time and place of the meeting at which the Commission will vote upon the waiver request. At the discretion of the Chairman of the Commission, the person requesting the waiver and any other interested person may be given the opportunity to speak regarding the waiver request.

(2) Decisions regarding waiver requests shall be based upon, but not limited to, the following:

(a) the nature, extent, and rationale of the request; and

(b) safeguards to ensure that the health, safety or welfare of clients will not be threatened.

(3) The Commission's decision shall be issued in writing by the Chairman of the Commission and shall state:

(a) the factual situation giving rise to the waiver request;

(b) the decision that the waiver request was granted, or granted subject to certain conditions;

(c) the time frame, if the waiver is granted; and

(d) the reason, if the waiver request was denied.

(4) The waiver may be granted retroactively:

(a) to the date of the authorization as described in Item (6) of Rule .0702 of this Section; or

(b) to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0706 of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0704 WAIVERS REQUESTED BY COMMISSION

(a) Any member of the Commission may initiate a request for waiver of any rule adopted pursuant to the rule-making authority of the Commission, or the rule-making authority

delegated to the Division Director by the Secretary as described in this Section.

(b) In requesting a waiver on behalf of one or more agencies or services, the Commission member is subject to Subitems (2)(a) and (b) of Rule .0706 of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0705 PROCEDURE FOR WAIVERS BY DIVISION DIRECTOR

If the rule for which waiver is requested was adopted pursuant to the rule-making authority delegated to the Division Director by the Secretary, the procedures set forth in this Rule shall be followed:

(1) Decisions regarding waiver requests shall be based upon, but not limited to, the criteria in Item (2) of Rule .0703 of this Section.

(2) A decision regarding the waiver request shall be issued in writing by the Division Director within 60 days from the date of receipt of the waiver request and shall state:

(a) the factual situation giving rise to the waiver request;

(b) the reasons why the request was granted, granted subject to certain conditions, or denied; and

(c) if granted, the time frame for which the waiver is granted.

(3) The waiver may be granted retroactively to the date of the authorization of the governing body as described in Item (6) of Rule .0702 of this Section or to the time frame requested by the Division Director if the waiver is submitted in accordance with Rule .0706 of this Section.

Statutory Authority G.S. 122C-112(a)(8).

.0706 WAIVERS REQUESTED BY DIVISION DIRECTOR

The Division Director may initiate a request for waiver of rules adopted pursuant to the rule-making authority of the Commission as described in this Section.

(1) Except when requesting a waiver on behalf of one or more agencies or services, the Division Director is exempt from the provisions of Items (2) and (6) of Rule .0702 of this Section.

(2) Instead, the Division Director shall list the types of agencies or services for which the waiver is requested.

Statutory Authority G.S. 122C-112(a)(8).

.0707 SPECIAL REQUESTS

(a) The Commission or Division Director may approve one or more lists of conditions under which an agency may make a special waiver request.

(b) In addition to all Rules of this Section, any agency making a special request for waiver of specified rules shall:

(1) address the relevant list of conditions; and

(2) obtain Division approval of the proposed alternative system of policy and procedures prior to action by either the Commission or Division Director.

(c) The Commission or Division Director may grant or deny waiver of specified rules upon receipt of an agency's special request submitted in accordance with the rules of this Section.

Statutory Authority G.S. 143B-147(a)(8).

.0708 APPEALS PROCEDURES FOR CONTRACT PROVIDERS

(a) Pursuant to G.S. 122C-151.3, an area authority shall establish written procedures for the resolution of disputes regarding decisions of an area authority with a contractor, former contractor client or person asserting the claims described in G.S. 122C-151.4.

(b) Decisions may be appealed to the Area Authority Appeals Panel as set forth in this Section.

Statutory Authority G.S. 122C-112; 122C-151.3; 122C-151.4.

.0709 ESTABLISHMENT OF AN AREA AUTHORITY APPEALS PANEL

(a) Pursuant to G.S. 122C-151.4(b), the Area Authority Appeals Panel, hereafter referred to as "the Panel," shall consist of three members who shall:

(1) be appointed by the Division Director and serve at the pleasure of the Secretary; and

(2) have education and experience relevant to the appeals process, as determined by the Division Director.

(b) The Division Director shall appoint the Chair of the Panel.

(c) Clerical support for the Panel shall be provided by the Division.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0710 PANEL APPEALS PROCEDURES

(a) Appeals of the decision of local area authorities shall be forwarded, along with all supplementary documentation considered during the local area appeals process, to the Division Director within 15 days of the local decision being rendered.

(b) The Division Director shall forward all information to the Chair of the Panel within five working days.

(c) The Panel shall complete an administrative review and notify the appealing party and the area program of its decision, in writing, within 15 days of receipt of the appeal. Unless further appealed within 15 days of the date of this decision, this decision shall be considered final.

(d) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final by submitting a written request to the Chair of the Panel within 15 days of the date of the administrative review decision.

(e) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chair.

(f) The hearing shall be scheduled at a time and place designated by the Chair.

(g) The appealing party and the area program shall be notified of the time and place of the hearing no less than 15 days prior to the hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0711 HEARING PROCEDURES

(a) The Chair of the Panel:

(1) will convene the meeting at the prearranged time and place;

(2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;

(3) may limit the total number of persons presenting for the appellant and appellee; and

(4) may impose time limits for presentations.

(b) The official representative of the appellant and appellee shall:

(1) specify by name and position all individuals who will be present for the hearing;

(2) provide the Panel with any requested information; and

(3) if appropriate, ensure that a representative of the appellant and appellee will be available at the hearing to make a presentation.

(c) Any member of the Panel may address questions to the representatives of the appellant or of the appellee.

(d) All persons present at the appeal will address only the Chair or a specific member of the Panel who has addressed a specific question to that individual.

(e) Direct exchanges between presenters for the appellant and the appellee shall be prohibited.

(f) The Panel may obtain any form of technical assistance or consultation relevant to the appeal.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0712 PANEL DECISIONS

(a) The Panel shall vote in open session on each specific item being appealed.

(b) Within five working days, each decision shall be conveyed in writing to the appealing party and the area authority.

(c) Any decision may be rescheduled for a subsequent meeting if the Panel determines that it lacks sufficient information to render a decision at the initial hearing.

(d) In all cases a final decision shall be rendered within 30 days of the written request for a hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

SECTION .0800 - GENERAL RULES FOR INFANTS AND TODDLERS

.0801 SCOPE

The Rules in this Section shall apply to any facility which serves infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite.

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

.0802 DEFINITIONS

In addition to the definitions contained in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

(1) "Atypical development" in children means those from birth to 60 months of age who:

(a) have autism;

(b) are diagnosed hyperactive;

(c) have an attention deficit disorder or other behavioral disorders; or

(d) exhibit evidence of, or are at risk for, atypical patterns of behavior and social-emotional development in one or more of the following areas:

(i) delays or abnormalities in achieving emotional milestones;

(ii) difficulties with:

(A) attachment and interactions with parents, other adults, peers, materials and objects;

(B) ability to communicate emotional needs;

(C) motor or sensory development;

(D) ability to tolerate frustration and control behavior; or

(E) ability to inhibit aggression;

(iii) fearfulness, withdrawal, or other distress that does not respond to the comforting of caregivers;

(iv) indiscriminate sociability; for example, excessive familiarity with relative strangers;

(v) self-injurious or other aggressive behavior;

(vi) substantiated evidence that raises concern for the child's emotional well-being regarding:

(A) physical abuse;

(B) sexual abuse; or

(C) other environmental situations;

as defined in G.S. 7A-517(1) and (21).

(3) "Developmentally delayed children" means those whose development is delayed in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication, social and emotional; and adaptive skills. The specific level of delay must be:

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

(b) for children from 36 to 60 months of age, documented by test performance two standard deviations below the mean on standardized tests in one area of

development or by performance that is one standard deviation below the norm in two areas of development. Or, it may be documented by a 25 percent delay in two areas on assessment instruments that yield scores in months.

(4) "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, published 1/1/92 and incorporated by reference. This adoption by reference includes subsequent amendments and editions of the referenced material, which may be obtained at no cost from the Branch Head, Child and Adolescent Services, Developmental Disabilities Section, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.

(a) For the purposes of these services, "transportation" means assistance in the travel to and from the multidisciplinary evaluation, specified early intervention services provided by certified developmental day centers or other center-based services designed specifically for children with or at risk for disabilities; and speech, physical or occupational therapy, or other early intervention services if provided in a specialized setting away from the child's residence.

(b) Transportation assistance may be provided by staff, existing public or private services, or by the family, who shall be reimbursed for their expenses, in accordance with applicable fee provisions.

(c) For the purposes of these services, "special instruction" means individually designed education and training in the strengths and needs of the child and family as identified in the multidisciplinary evaluation, in which the focus is on the major developmental areas and individual family needs. It occurs in two primary types of settings; home and mainstreamed center-based:

(i) The mainstreamed center-based settings may be those designed primarily for children with or at risk for disabilities, such as developmental day centers or therapeutic preschools, if they allow for planned and ongoing contact with children without disabilities.

(ii) Mainstreamed center-based settings also include those established primarily for children without disabilities, such as preschools, family day care homes, licensed child care centers:

(A) when provided in these programs, special instruction also includes consultation and training for staff on curriculum design, teaching and behavior management strategies, and approaches to modification of the environment to promote learning; and

(B) service coordination activities, including assistance to the family in identifying such programs must be provided with special instruction, if requested by the family.

(5) "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, published 6/22/89 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.

(6) "High risk children" means those from birth to 36 months of age for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be necessary. There are two categories of high risk children. These are:

(a) High Risk-Established: Diagnosed or documented physical or mental conditions which are known to result in developmental delay or atypical development as the child matures. Such conditions include, but need not be limited to the following:

(i) chromosomal anomaly or genetic disorders associated with developmental deficits;

(ii) metabolic disorders associated with developmental deficits;

(iii) infectious diseases associated with developmental deficits;

(iv) neurologic disorders;

(v) congenital malformations;

(vi) sensory disorders; or

(vii) toxic exposure; or

(viii) severe attachment disorders.

(b) High Risk-Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or postneonatal risk conditions as defined on page 12 in the 1990 publication, "NORTH CAROLINA CHILD SERVICE COORDINATION PROGRAM" available from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material. These conditions are as follows:

(i) maternal age less than 15 years;

(ii) maternal PKU;

(iii) mother HIV positive;

(iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;

(v) parental blindness;

(vi) parental substance abuse;

(vii) parental mental retardation;

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

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

.0803 GENERAL REQUIREMENTS FOR INFANTS AND TODDLERS

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

(1) an assessment which includes:
(a) physical (including vision and hearing), communication, cognitive, social and emotional and adaptive skills development, and the requirements set forth in 34 C.F.R. Part 303.344 (a)(2);
(b) a determination of the child's unique strengths and needs in terms of these areas of development and identification of services appropriate to meet those needs;
(c) if requested by the family, a determination of the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with or at risk for a disability. The family-focused and directed assessment shall be based on information provided through a personal interview and incorporate the family's description of these resources, priorities, and concerns in this area;
(d) procedures developed and implemented to ensure participation by the client's family or the legally responsible person;
(e) no single procedure used as the sole criterion for determining a child's eligibility;
(f) an integrated assessment process which involves at least two persons, each representing a different discipline or profession, with the specific number and types of disciplines based on the particular needs of the child:
(i) The assessment shall include current medical information provided by a physician, physician's assistant, or nurse practitioner; however, a physician, physician's assistant, or nurse practitioner is not required as one of the disciplines involved in the assessment; and
(ii) Further information regarding the assessment may be found in the document "Eligibility Determination for the Infants-Toddler Program", published by the Department of Environment, Health, and Natural Resources, and available from the Developmental Disabilities Section of DMH/DD/SAS at no cost upon request.
(g) an evaluation process based on informed clinical opinion;
(h) an assessment process completed within 45 calendar days from the date of referral. The referral shall be initiated by a request for these services made to any one of the public agencies participating in the Part H of the Individuals with Disabilities Education Act Interagency Agreement. The request shall become a referral when the area program determines that all of the following is available:
(i) sufficient background information to enable the agency receiving the referral to establish communication through a telephone call or home visit;
(ii) reason for referral, date of referral and agency or individual making referral;
(iii) child and family identifying information such as names, child's birthdate and primary physician; and
(iv) summary of any pre-existing child and family screening or assessment information;
(i) a 45 calendar day completion requirement which may be extended in exceptional circumstances, such as, the child's health assessment is being completed out-of-state, or family desires make it impossible to complete the assessment within the time period. The specific nature and duration of these circumstances which prevent completion within 45 days and the attempts made by the provider to complete the assessment shall be documented and an interim IFSP shall be developed and implemented; and
(j) the child's family or legally responsible person shall be fully informed of the results of the assessment process.

(2) There shall be a habilitation plan which is referred to as the Individualized Family Service Plan (IFSP) which shall include:
(a) a description of the child's present health status and levels of physical (including vision and hearing),

communication, cognitive, social and emotional, and adaptive development;

(b) with the concurrence of the family, a description of the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant and toddler with or at risk for a disability;

(c) goals for the child, and, if requested, goals for the child's family;

(d) criteria and time frames to be used to determine progress towards goals;

(e) planned habilitation procedures related to the goals;

(f) a statement of the specific early intervention services to be provided to meet the identified child and family needs, the initiation dates, frequency and method, duration, intensity and location (including the most natural environment) of service delivery, and the persons or agencies responsible;

(g) the name of the service coordinator from the profession most immediately relevant to the needs of the child or family; and who is otherwise qualified to carry out all applicable responsibilities for coordinating with other agencies and individuals the implementation of the IFSP;

(h) the plans for transition into services which are the responsibility of the NC Department of Public Instruction, or other available services, when applicable;

(i) the payment arrangements for the specific services delineated in Subparagraph (3)(c)(vi) of this Rule;

(j) a description of medical and other services needed by the child, but which are not required under Part H of the Individuals with Disabilities Education Act, and the strategies to be pursued to secure those services through public or private resources. The requirement regarding medical services does not apply to routine medical services, such as immunization and well-baby care, unless the child needs these services and they are not otherwise available.

(3) The IFSP shall be:

(a) reviewed on at least a semi-annual basis or more frequently upon the family's request;

(b) revised as appropriate, but at least annually; and

(c) include in the initial development and annual revision process for the IFSP for infants and toddlers, participation by:

(i) the parent or parents of the child;

(ii) other family members, as requested by the parent;

(iii) an advocate or person outside of the family if the parent requests participation;

(iv) the provider of the early intervention services;

(v) the service coordinator designated for the family, if different from the provider of the early intervention services; and

(vi) the provider of the assessment service, if different from the provider of the early intervention services.

(d) The initial IFSP meeting and annual reviews shall be arranged and written notice provided to families early enough to promote maximum opportunities for attendance. The semi-annual review process shall include participation by persons identified in Subparagraphs (3)(c)(i) through (v) of this Rule. If any of these assessment and intervention providers are unable to attend one of the development or review meetings, arrangements may 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. Such arrangements must be approved by all of the participants.

(e) The IFSP for infants and toddlers shall be based upon the results of the assessment referenced in Paragraph (1) of this Rule and upon information from any ongoing assessment of the child and family. However, early intervention services may commence before completion of this assessment if:

(i) parental consent is obtained; and

(ii) the assessment is completed within the 45-day time period referenced in Paragraph (a) of this Rule.

(f) In the event that exceptional circumstances, such as child illness, residence change of family, or any other similar emergency, make it impossible to complete the assessment within the 45-day time period referenced in Paragraph (1) of this Rule, the circumstances shall be documented and an interim IFSP developed with parent permission. The interim IFSP shall include:

(i) the name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;

(ii) goals for the child and family when recommended;

(iii) those early intervention services that are needed immediately; and

(iv) suggested activities that may be carried out by the family members.

(g) 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.

(h) The IFSP shall be developed within 45 days of referral for those children determined to be eligible. The referral shall be as defined in Subparagraph (1)(h) of this Rule.

(i) The contents of the IFSP shall be fully explained to the parents, and informed written consent from the parents shall be obtained prior to the provision of

early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service, or withdraw consent after first providing it, that service shall not be provided. The early intervention services for which parental consent is obtained must be provided.

(j) IFSP meetings shall be conducted in settings convenient to and in the natural language of the family.

(4) The C.F.R. incorporated by reference in this Rule includes subsequent amendments and editions of the referenced material. A copy of the C.F.R. is available at no cost from DMH/DD/SAS.

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

.0804 SURROGATE PARENTS

(a) Circumstances Requiring Surrogate Parents. The area program shall assure the availability of a surrogate parent for infants and toddlers eligible for early intervention services when:

(1) a biological parent or guardian cannot be identified;

(2) efforts to locate the parent are unsuccessful; or

(3) the child is involved in a voluntary placement agreement or is placed in protective custody through the local Department of Social Services.

(b) Identifying Need For And Selection Of A Surrogate Parent:

(1) The child service coordinator shall be responsible for identifying the need for a surrogate parent.

(2) Identification shall be based on any pertinent information and input from:

(A) the local Department of Social Services; and

(B) anyone serving on the Infant/Toddler Interagency Council.

(3) The Area Program Director, or a designee, serving the county of the child's legal residence shall select the surrogate parent.

(c) Responsibilities Of A Surrogate Parent. A surrogate parent shall have the responsibility of being an active spokesperson for a child in matters related to the:

(1) evaluation and assessment of the child;

(2) development and implementation of the child's IFSP, including annual evaluations and periodic reviews; and

(3) ongoing provision of early intervention services to the child.

(d) Priorities For Selection Of A Surrogate Parent:

(1) The area program shall make every effort to select a surrogate parent who has close ties to the child.

(2) In instances when children are placed in foster care or in the care of another individual, the biological parents or guardian shall be given first consideration to act as the surrogate parent.

(3) The following order of priority shall then be considered when selecting the surrogate parent:

(A) person "acting as a parent" - A grandparent, governess, neighbor, friend, or private individual who is caring for the child;

(B) interested relative;

(C) foster parent;

(D) friend of the child's family; or

(E) other individuals.

(4) Approval of the selection of the surrogate parents shall be obtained from either the biological parents or guardian.

(e) Criteria For Selection Process. Anyone who serves as a surrogate parent shall:

(1) not have conflicting interests with those of the child who is represented;

(2) have knowledge and skills that ensure the best possible representation of the child;

(3) not have any prior history of abuse or neglect; or

(4) not be an employee of the agency involved in the provision of early intervention or other services for the child. However, a person who otherwise qualifies to be a surrogate parent is not considered an employee based on being paid by a public agency to serve as a surrogate or foster parent.

(f) Training Requirements For A Surrogate Parent:

(1) Anyone who serves as a surrogate parent, and is not related to the child, shall have participated in training provided by or approved by the area mental health, developmental disabilities and substance abuse program.

(2) Training shall include, but not be limited to, the following topics:

(A) Part H of the Individuals with Disabilities Education Act, regarding parents' rights, entitlements for children, and services offered;

(B) developmental and emotional needs of eligible infants and toddlers;

(C) available advocacy services; and

(D) relevant cultural issues if the child's culture is different from that of the surrogate parent.

(3) The level of training approach shall be based on needs of the surrogate parent, as determined by the surrogate parent in conjunction with the area program.

Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

.0805 PROCEDURAL REQUIREMENTS

(a) General Area Program Requirements. Area programs and contract agencies shall comply with Section 303.402 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to:

(1) the right of the parents of an eligible child to examine records.

(2) the requirement of prior notice to parents of an eligible child in the parents' native language.

(3) the requirement of parental consent. The period of reasonable time referenced in 303.403(a) shall be

construed to be no less than two weeks.

(4) early intervention services (infants and toddlers referred for services shall be assessed in accordance with the provisions of Rule .0803 of this Subchapter, admitted in accordance with the provisions of Subparagraphs (a)(3) and (4) of Rule .0201 of this Subchapter, and receive services in accordance with the provisions of Rule .0803 of this Subchapter: and

(5) surrogate parents.

(b) Complaint Resolution/Mediation:

(1) Parents of an eligible child shall have the right to a timely administrative resolution of any complaints concerning an area program's or contract agency's proposal or refusal to initiate or change the identification, evaluation or placement of the child, or concerning the provision of appropriate early intervention services to the child and the child's family. The parents of an eligible child shall also have the right to mediation of such complaints.

(2) Whenever an area program or contract agency becomes aware that the parents of an eligible child disagree with any decision regarding early intervention services for their child, the area program or contract agency, whichever is appropriate, shall immediately advise the parents regarding the availability of, and procedure for, requesting complaint resolution under this Section.

(3) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall be in writing and sent to the Director of the area program in which the eligible child is receiving services.

(4) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall contain the following:

(A) name and address of the child;

(B) name and address of the parent;

(C) name and address of the area program or contract agency against whom the complaint is made;

(D) a statement of facts describing in sufficient detail the nature of the complaint;

(E) the signature of the complaining parent and the date of signing; and

(F) whether the parent desires mediation prior to the administrative resolution of his complaint.

(5) Parents of an eligible child may request mediation to resolve a complaint as an intervening step prior to the administrative proceeding. If mediation is requested, the mediation shall take place prior to the administrative proceeding.

(6) If mediation or administrative proceeding is requested, an impartial person shall be:

(A) subject to qualifications of an impartial person as specified in Section 303.421 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations and incorporated by reference. This incorporation by reference shall include any subsequent amendment and editions of the referenced material.

(B) selected from a list of mediators and administrative hearing officers approved by the Chief of the Developmental Disabilities Section of DMH/DD/SAS; and

(C) appointed by the area director to serve as a mediator;

(7) DMH/DD/SAS shall provide a training program for the mediators and the administrative hearing officers.

(8) Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediation, administrative proceeding and written decision must be completed within the 30-day timeline set forth in Rule .0917 of this Section.

(c) Scheduling Administrative Proceedings. Upon receipt of written request for administrative complaint resolution , the Director of the area program in which the eligible child is receiving services shall schedule an administrative proceeding in accordance with the requirements of this Section. The parents shall be notified in writing of the date, time and location of the proceeding no later than seven calendar days prior to the hearing by the area director. The hearings must be scheduled at a time and place that is reasonably convenient to the parents.

(d) Authority And Responsibilities Of Impartial Person:

(1) The hearing officer shall have the powers listed in G.S. 150B-33, and in addition shall have the following authority:

(A) to establish reasonable time limitations on the parties' presentations;

(B) to disallow irrelevant, immaterial or repetitive evidence;

(C) to direct that additional evaluations of the child be performed;

(D) to make findings of fact and conclusions of law relevant to the issues involved in the hearing;

(E) to issue subpoenas for the attendance of witnesses or the production of documents; and

(F) to specify the type and scope of the early intervention services to be offered the child, where the proposed services are found to be inappropriate.

(2) The hearing officer does not have the authority to:

(A) determine that only a specific program, specific early intervention staff person or specific service provider is appropriate for the pupil; or

(B) determine noncompliance with state law and regulations.

(3) The decision of the hearing officer shall be in writing and shall contain findings of fact, conclusions of law and the reasons for the decision. The hearing officer shall mail a copy of the decision to each party by certified mail, return receipt requested.

(4) The hearing officer shall inform the parent that the parent may obtain a transcript of the hearing at no

cost.

(e) Parent Rights In Administrative Proceedings. Parents of an eligible child shall have the rights set forth in Section 303.422 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations.

(f) Timelines. The administrative proceeding shall be completed, and a written decision mailed to each of the parties within 30 days after the receipt of a parent's complaint as described in Rule .0913 of this Section.

(g) Civil Action. Section 303.424 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the availability of a civil action for any party aggrieved by the findings and decision in an administrative proceeding is adopted by reference and shall include any subsequent editions and amendments.

(h) Status Of Child During Proceedings. Section 303.425 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the status of a child during an administrative proceeding is adopted by reference and shall include any subsequent editions and amendments.

(i) Confidentiality. Personally identifiable information concerning an eligible child or family member of an eligible child is confidential and may not be disclosed or acquired except as provided by Rule .0921, .0922, and .0924 of this Section.

(j) Disclosure Of Confidential Information To Employees. An area program or contract agency may disclose confidential information to its employees who have a legitimate need for access to the information.

(k) Written Consent Required. Except as provided in Rule .0913 of this Section, all disclosures of confidential information, including disclosures between an area program and contract agency, may be made only with the written consent of the parents. Client information may be disclosed between agencies participating in the provision of early intervention services in accordance with G.S. 122C-53(a), 122C-55(c), 122C-55(f), or 122C-55(h), as appropriate. However, the extent of information disclosed shall be limited to that information which is necessary to carry out the purpose of the disclosure. Parents shall be informed of their right to refuse to consent to the release of confidential information.

(l) Content Of Written Consent:

(1) When consent for release of information is obtained by an area program or contract agency covered by the rules in this Subchapter, a consent for release form containing the information in this Subparagraph shall be utilized. The consent form shall contain the following information:

(A) child's name;

(B) name of party releasing the information;

(C) name of individual or agency to whom information is being released;

(D) information to be released;

(E) purpose for the release;

(F) length of time consent is valid;

(G) a statement that the consent is subject to revocation at any time;

(H) signature of parent;

(I) signature of individual witnessing the consent; and

(J) date the consent is signed.

(2) The release shall be effective only until the initial Individual Family Service Plan is developed, or, if an Individual Family Service Plan has been developed, until the next Individual Service Plan review.

(m) Release To Public Schools. With the consent of the parents, confidential information may be provided to the public schools if and when the child is enrolled in a program under Part B of the Education of the Handicapped Act. If the parents refuse to consent, confidential information shall not be released to the public schools.

(n) Consent To Receive Services. The parents of a child, eligible to receive early intervention services, may determine whether they, their child, or other family members will accept or decline any type of early intervention service without jeopardizing the right to receive other early intervention services.

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

SECTION .0900 - .1000 - RESERVED FOR FUTURE CODIFICATION

SECTION .1100 - PARTIAL HOSPITALIZATION FOR INDIVIDUALS WHO ARE ACUTELY MENTALLY ILL

.1101 SCOPE

A partial hospitalization facility is a day/night facility which provides a broad range of intensive and therapeutic approaches which may include group, individual, occupational, activity and recreational therapies, training in community living and specific coping skills, and medical services as needed primarily for acutely mentally ill individuals. This facility provides services to:

(1) prevent hospitalization; or

(2) to serve as an interim step for those leaving an inpatient hospital.

This facility provides a medical component in a less restrictive setting than a hospital or a residential treatment or rehabilitation facility.

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

.1102 STAFF

(a) Staff shall include at least one qualified mental health professional.

(b) Each facility serving minors shall have:

(1) a program director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field;

(2) one staff member present if only one client is in the program, and two staff members present when two or more clients are in the program; and

(3) a minimum ratio of one staff member present for every eight clients at all times.

(c) Each facility serving adults shall have a minimum ratio of one staff member present for every six clients at all times.

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

.1103 OPERATIONS

(a) A physician shall participate in diagnosis, treatment planning, and admission and discharge decisions. This physician shall be a psychiatrist unless a psychiatrist is unavailable or for other good cause cannot be obtained.

(b) Each facility shall operate for a minimum of four hours per day (exclusive of transportation time), five days per week, excluding legal or governing body designated holidays.

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

SECTION .1200 - PSYCHOSOCIAL REHABILITATION FACILITIES FOR INDIVIDUALS WITH SEVERE AND PERSISTENT MENTAL ILLNESS

.1201 SCOPE

A psychosocial rehabilitation facility is a day/night facility which provides skill development activities, educational services, and pre-vocational training and transitional and supported employment services to individuals with severe and persistent mental illness. Services are designed primarily to serve individuals who have impaired role functioning that adversely affects at least two of the following: employment, management of financial affairs, ability to procure needed public support services, appropriateness of social behavior, or activities of daily living. Assistance is also provided to clients in organizing and developing their strengths and in establishing peer groups and community relationships.

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

.1202 STAFF

(a) Each facility shall have a designated program director.

(b) A minimum of one staff member on-site to each eight or fewer clients in average daily attendance shall be maintained.

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

.1203 OPERATIONS

(a) Skills development, educational and prevocational services. Each facility shall provide:

(1) skills development activities which include:

(A) community living, such as housekeeping, shopping, cooking, use of transportation facilities, money management;

(B) personal care such as health care, medication management, grooming;

(C) social relationships;

(D) use of leisure time;

(2) educational activities which include assisting the client in securing needed education services such as adult basic education and special interest courses; and

(3) prevocational services which focus on the development of positive work habits and participation in work activities.

(b) Employment Services. Each facility shall provide transitional or supported employment services to facilitate client entry into competitive employment.

(1) When supported employment services are provided by the facility, 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) When supported employment is to be provided by the facility, one of the following models shall be used:

(A) job coaching and supervision of individuals in an industry or business;

(B) mobile crew service jobs of eight or fewer workers in the community under the training and supervision of a crew leader; or

(C) small business enterprises operated with eight or fewer workers with training and supervision provided on site.

(3) When transitional employment services are provided by the facility:

(A) There shall be an agreement between the facility and employer for a specific job and the job shall first be performed by a facility staff member to determine its technical requirements.

(B) The selection of a client to fill a placement is the responsibility of the facility and the individual client.

(c) Operating Hours. Each facility shall operate for a minimum of five hours per day, five days per week (exclusive of transportation time).

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

SECTION .1300 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

.1301 SCOPE

(a) A residential treatment facility for children and adolescents is a free-standing residential facility which provides a structured living environment for children and adolescents who have a primary diagnosis of mental illness or emotional disturbance and who may also have other disabilities and for whom removal from home is essential to facilitate treatment.

(b) Services shall be designed to address the functioning level

of the child or adolescent and include training in language or communication skills, social relationships, and recreational skills. Some children or adolescents may be able to receive services in a day treatment facility, have a job placement, or attend public schools; for others, special education services may need to be offered within the residential setting.

(c) Different levels of residential treatment programs shall be provided to meet the individual needs of the children and adolescents placed in the facility.

(d) Treatment, services, and discharge plans provided by residential treatment facilities shall be coordinated with other individuals and agencies within the client's local system of care.

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

.1302 STAFF

(a) Each facility shall have a director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.

(b) At all times, at least one direct care staff member shall be present with every four children or adolescents. If children or adolescents are cared for in separate buildings, the ratios shall apply to each building.

(c) When two or more clients are in the facility, an emergency on-call staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.

(d) Psychiatric consultation shall be available as needed for each client.

(e) Clinical consultation shall be provided by a qualified mental health professional to each facility at least twice a month.

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

.1303 OPERATIONS

(a) Capacity. Each facility shall serve no more than a total of 12 children and adolescents, except as set forth in this Rule.

(1) Any facility licensed as a Residential Treatment Facility in this category on 1/4/94 and providing services to more than a total of 12 children and adolescents may continue to provide services at no more than the facility's licensed capacity, providing that the capacity does not exceed 24.

(2) Any Child Caring Institution which was licensed by the Division of Social Services on 1/4/94 may seek licensure as a Residential Treatment Facility as follows:

(A) the capacity of each residential unit in the Residential Treatment Facility shall be limited to 12 children and adolescents;

(B) each residential unit will be administered, staffed, and located to function separately from all other residential units in the facility; and

(C) the overall capacity shall be limited to the current capacity of the institution at the time of licensure as a Residential Treatment Facility.

(3) The two former Child Caring Institutions that were licensed as Residential Treatment Facilities in this category on 4/1/90 shall be:

(A) exempt from the capacity limit of 24;

(B) exempt from the provisions in Subparagraphs (2)(A) and (B) of this Rule; and

(C) limited to the licensed capacity existing on July 1, 1993.

(b) Parental Involvement. Residential treatment facilities are expected to involve parents or other responsible adults in development of treatment goals and plans.

(c) Age Limitation. If an adolescent has his 18th birthday while receiving treatment in a residential facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.

(d) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.

(e) Personal Belongings. Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

(d) Hours of Operation. Each facility shall operate 24 hours per day, at least five days per week, at least 50 weeks per year, excluding legal holidays.

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

SECTION .1400 - DAY TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

.1401 SCOPE

(a) Day treatment is a day/night facility for children and adolescents who are emotionally disturbed which coordinates educational activities and intensive treatment while allowing the individual to live at home or in the community.

(b) This service is designed to increase the ability of a child or adolescent to relate to others and function appropriately within the community while serving as an intervention to prevent hospitalization or placement outside the home or community.

(c) It shall provide a therapeutic environment as well as other activities which may include individual therapy, group therapy, recreational therapy, language communication skills development, social skills development, pre-vocational service, vocational training, service to parents, and individual advocacy.

(d) The client's educational activities may be provided in this facility or in another educational setting, such as regular classes or special education programs within a typical school setting.

(e) Treatment, services, and discharge plans provided by Day Treatment programs shall be coordinated with other individuals and agencies within each client's local system of care.

(f) Day treatment facilities may include before/after school and summer facilities, and early intervention.

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

.1402 STAFF

(a) Each facility shall have a program director who has a minimum of two years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.

(b) A minimum of two staff members shall be present with clients at all times except on occasions when only one client is in the program, in which case only one staff member is required to be present.

(c) A minimum ratio of one staff member to every eight clients shall be maintained at all times.

(d) Psychiatric consultation shall be available for each client.

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

.1403 OPERATIONS

(a) If an adolescent has his 18th birthday while receiving treatment in a day treatment facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.

(b) If an older client presents with needs developmentally characteristic of this age group, he may be considered for admission.

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

SECTION .1500 - INTENSIVE RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WITH EMOTIONAL OR BEHAVIORAL DISTURBANCES

.1501 SCOPE

(a) An intensive residential treatment facility for children and adolescents with emotional and/or behavioral disturbances is a short-term, 24-hour residential program providing a structured living environment for children and adolescents who do not meet criteria for acute inpatient care and whose needs require more intensive treatment and supervision than would be available in a community residential treatment facility. Intensive residential treatment is not intended to be a long-term residential placement for children and adolescents who must be permanently removed from their homes.

(b) Services shall be designed to address the functioning level of the child and adolescent and include training in language or communication skills, social relationships, and behavioral skills necessary to move to a community setting. Services may also include monitoring medication trials.

(c) The target population to be served in an intensive residential setting is children and adolescents for whom removal from home or a community-based residential setting is essential to facilitate treatment. Intensive residential treatment is targeted toward children and adolescents who no longer meet criteria for inpatient psychiatric services and need a step-down placement prior to community placement, or those who have been placed in a community residential setting and need a more intensive treatment program.

Statutory Authority G.S. 143B-147.

.1502 STAFF

(a) Each facility shall have a director who has a minimum of three years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.

(b) At all times, at least one direct care staff member shall be present with every four children or adolescents in each residential unit.

(c) When two or more clients are in the facility, an emergency on-call staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.

(d) If the facility is hospital based, staff shall be specifically assigned to this program, with responsibilities clearly separate from those performed on an acute medical unit or other residential units.

(e) Each child or adolescent admitted to a facility shall have a weekly consultation with a psychiatrist to review medications and to ensure that the psychiatrist is involved in the development of a transition plan to a less restrictive setting or to a more acute inpatient setting.

(f) Clinical consultation shall be provided weekly by a qualified mental health professional.

(g) Clinical consultation with staff from the responsible area program shall occur weekly in order to assist with the development of a treatment plan in a community-based setting.

Statutory Authority G.S. 143B-147.

.1503 OPERATIONS

(a) Capacity. Each unit shall serve no more than a total of 12 persons. If the facility has more than one residential unit, the capacity of each unit shall be limited to 12 children and adolescents.

(b) Residential units. Each residential unit will be administered, staffed, and located to function separately from all other residential units in the facility.

(c) Length Of Stay. The length of stay shall be no more than 90 days from admission to discharge. Efforts for discharge to a less restrictive community residential setting shall be documented from the date of admission.

(d) Hours Of Operation. Each facility shall operate as a 24-hour facility at least 50 weeks per year.

(e) Family Involvement. Family members or guardians shall be involved in the development and implementation of treatment plans in order to assure a smooth transition to a lesser restrictive residential setting.

(f) Education. Children and adolescents residing in an intensive residential treatment facility must receive appropriate educational services, either through a facility-based school, "home-based" services, or through a day treatment program. Transition to a public school setting shall be part of the treatment plan.

(g) Transition Planning. Representatives from agencies and institutions serving a child or adolescent shall meet at admission and 30 days prior to discharge in order to assure that a plan for

transition to a lesser restrictive residential setting is in place. Family members and/or guardians of the child shall be present at these meetings.

Statutory Authority G.S. 143B-147.

.1504 PHYSICAL PLANT

(a) The facility may be hospital based. The units must be self-contained and separate from acute medical units and other residential units in a clearly defined physical setting.

(b) Beds may not be shared with an acute medical unit.

Statutory Authority G.S. 143B-147.

SECTION .1600 - SECTION .2000 - RESERVED FOR FUTURE CODIFICATION

SECTION .2100 - SPECIALIZED COMMUNITY RESIDENTIAL CENTERS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

.2101 SCOPE

(a) A specialized community residential center is a 24-hour facility which provides care, treatment and developmental training for individuals who are developmentally disabled or multi-handicapped over an extended period of time, through integration of medical services and close supervision.

(b) The service is designed to assist each individual to attain his highest level of independent living skills while receiving care for his physical needs.

(c) This facility may be certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

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

.2102 STAFF

(a) Each facility shall designate a director who has experience in developmental. disabilities and holds a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or who has comparable experience and education.

(b) At least one registered nurse or licensed practical nurse shall be on the grounds of the facility at all times.

(c) Each facility shall have at least one registered nurse on staff.

(d) During waking hours, the following minimum client to staff ratios shall be in effect for each building:

(1) a minimum of two direct care staff members shall be on duty at all times; and

(2) a minimum of one direct care staff member shall be on duty for every five clients.

(e) During sleeping hours, the following minimum client to staff ratios shall be in effect for each building:

(1) one direct care staff member shall be awake and on duty at all times and one other staff member shall be on call in the building; and

(2) a minimum of one direct care staff member shall be on duty for every ten clients.

(f) Medical care shall be available on a 24-hour basis for each client.

(g) Each staff member shall have a current medical statement on file with the facility.

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

.2103 OPERATIONS

(a) Capacity. Facilities beginning operation subsequent to the effective date of these rules shall be designed to serve no more than 30 clients at one location.

(b) Personal Clothing. Each client shall have adequate changes of personal clothing at least daily.

(c) Daily Training Activities:

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

(2) 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.

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

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

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

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

(7) When adults are served, vocational services shall be provided unless there is medical contraindication.

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

.2104 PHYSICAL PLANT

No more than six infants or children and no more than four adolescents or adults may share an individual bedroom regardless of bedroom size.

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

SECTION .2200 - BEFORE/AFTER SCHOOL, SUMMER, AND SCHOOL YEAR DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS, DEVELOPMENTAL DISABILITIES, OR ATYPICAL DEVELOPMENT

.2201 SCOPE

(a) Before/after school developmental day services for school aged and preschool children with or at risk for developmental delays, developmental disabilities, or atypical development are facilities that provide individual habilitative programming and recreational activities.

(1) Services are provided preceding and following the

school day during the months of local school operation and shall be designed to meet developmental needs of the children as well as the child care needs of families.

(2) Before/after school services may be provided as a component of a developmental day center.

(b) Summer developmental day services for school aged and preschool children with or at risk for developmental delays, developmental disabilities, or atypical development are facilities that provide individual habilitative programming and recreational activities in a licensed child care center for school-age children during the summer period, when they are not participating in educational activities. This service is:

(1) designed to promote continuing progress in acquiring developmental skills such as self-help, fine and gross motor, language and communication, cognitive and social skills in order to facilitate functioning in a less restrictive environment; and

(2) designed to meet child care needs of families.

(c) School year developmental day services are day facilities that which provide individual habilitative programming for school aged children during the school day throughout the school year when the local schools are in operation. The children are served under a contractual agreement with the local school system.

(d) The Rules in this Section are applicable when:

(1) these services are provided as a separate free-standing component which is not in the same facility as a developmental day center for children licensed under G.S. 110, Article 7; and

(2) these services are offered for a total of four hours per day or less.

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

.2202 STAFF

(a) Each staff member, except student trainees and supervised volunteers, shall be at least 18 years of age.

(b) Each center shall have a designated program director who has experience in developmental disabilities, and holds a baccalaureate degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.

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

(d) A minimum of one direct care staff member shall be on duty for every five children.

(e) Each staff member shall have a current medical statement on file with the facility.

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

.2203 OPERATIONS

(a) Each before/after school developmental day service shall be available for a minimum of three hours per day (exclusive of transportation time), five days per week, during the months of local school operation.

(b) Each summer developmental day service shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, during the weeks in which local school operation is closed for summer break.

(c) Each school year developmental day service shall be available for a minimum of eight hours per day, five days per week during the months of local school operation.

(d) The center shall provide or secure opportunities for the parent or the legally responsible person to attend individual or group activities.

(e) Grouping shall allow for attending to the individual needs of each child and reflect developmentally appropriate practices.

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

.2204 PHYSICAL PLANT

(a) Classroom And Activity Space:

(1) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets, and other fixed equipment.

(2) Space shall be available for small groups and individualized training.

(3) Special interest areas shall be provided to enhance the development of individual children.

(4) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.

(5) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 35 square feet available per child for indoor classroom and activity space.

(b) Outdoor Activity Space:

(1) Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time.

(2) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 100 square feet available per child.

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

SECTION .2300 - ADULT DEVELOPMENTAL ACTIVITY PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

.2301 SCOPE

(a) An Adult Developmental Activity Program (ADAP) is a day/ night facility which provides organized developmental activities for adults with developmental disabilities to prepare the individual to live and work as independently as possible.

The activities and services of an ADAP are designed to adhere to the principles of normalization and community integration aimed at increasing age-appropriate actions, images and appearance of the individual.

(b) An ADAP offers a diverse variety of specific services and activities. These include vocational evaluation, vocational training, remunerative employment, personal and community living skill development, adult basic education and long-term support and follow-up . Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided. The amount of time devoted to these areas varies considerably depending on the needs of the clients served.

(c) The Rules contained in this Section are applicable to facility-based ADAP services.

(d) The majority of the ADAP activities in this model, whether vocational or developmental in nature, are carried out on the premises of a site specifically designed for this purpose.

(e) It is the ADAP that shall be subject to licensure, not the location of the business or organization where the client may be placed for work.

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

.2302 DEFINITIONS

In addition to the terms defined in Rule .0103 of this Subchapter and G.S. 122C-3, the following terms shall also apply:

(1) "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 Chief of the appropriate disability section of DMH/DD/SAS or his designee and the Area Director or his designee if the facility is operated by a contract agency of the area program or other service provider. DMH/DD/SAS shall request appropriate personnel from the Division of Vocational Rehabilitation to participate in the plan 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;

(b) types of supported employment models to be used;

(c) time frame for the conversion period;

(d) interim proposed facility staffing patterns and responsibilities; and

(e) proposed budget for the conversion plan.

(2) "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 an individual or 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 involvement of staff working with the individuals in these integrated settings.

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

.2303 STAFF

(a) Each ADAP shall have a designated full-time program director.

(b) The Program Director shall be at least a high school graduate or equivalent with three years of experience in developmental disabilities programming.

(c) Each facility shall have evaluation services available for all clients.

(d) Each facility shall maintain an overall direct service ratio of at least one full-time or full-time equivalent direct service staff member for every ten or fewer clients. For facilities having an approved supported employment conversion plan as defined in Rule .2302 of this Section, this standard will not apply for a maximum of ten clients or 20 percent of a facility's average daily enrollment, whichever is greater.

(e) Each facility shall have an Admissions Committee.

(f) If the site is maintained by the ADAP:

(1) A safety committee comprised of staff members and clients shall be appointed to review accident reports and to monitor the ADAP for safety; and

(2) Minutes shall be kept of all meetings.

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

.2304 OPERATIONS

(a) Safety Educational Program. Each ADAP shall provide an ongoing educational program for staff and clients designed to teach them the principles of accident prevention and control of specific hazards. The program shall include training for clients in personal, work and environmental safety.

(b) Business Practices:

(1) If the ADAP seeks or receives remuneration for goods or services provided to another individual, organization or business:

(A) Supplies, materials or tools, if provided by the ADAP, shall be identified as a separate amount in the bid price;

(B) Wages paid to ADAP clients shall be on a piece rate or hourly commensurate wage;

(C) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions; and

(D) Prices for goods produced in the ADAP shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(2) If the client is an employee of another individual, organization or business, the ADAP shall review client earnings information on at least an annual basis to ensure appropriateness of pay rates and amounts.

(3) Clients shall be informed of their rights and respon-

sibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortious or unethical conduct.

(c) Handbook. Each ADAP shall have a client handbook including, but not limited to, information about services and activities.

(1) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.

(2) Each client shall be given a handbook, and the handbook shall be reviewed with the client.

(d) Hours Of Operation. ADAP services shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week, unless closed in accordance with procedures outlined in the AREA PROGRAM BUDGETING AND PROCEDURES MANUAL, APSM 75-1.

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

.2305 PHYSICAL PLANT

If the site is maintained by the ADAP:

(1) Each site shall be inspected annually by an outside safety consultant with written documentation and follow-up on recommendations; and

(2) Each site shall be designed and equipped to promote the training, employment and adult status of clients.

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

.2306 CLIENT ELIGIBILITY AND ADMISSIONS

(a) Eligibility. Clients served shall be eligible for ADAP regardless of financial resources with the exception of a client whose work earnings exceed 60% of the federal statutory minimum wage over a consecutive 90-day period. With prior approval of the appropriate area program director or designee, clients who are participating in a supported employment program authorized by DMH/DD/SAS may have earnings in excess of 60% the prevailing wage. Eligibility for clients in non-supported employment settings whose earnings have exceeded over 60% the prevailing wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation, or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services. The eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional. Requests for the extension shall be based on a joint case review involving a representative of the involved ADAP, the local VR unit and the area program. The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for addressing these deficits. The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.

(b) Admissions. Each ADAP shall have written admission policies and procedures.

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

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

(3) A qualified developmental disabilities professional of the area program shall certify the eligibility of each client for the ADAP service.

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

SECTION .2400 - DEVELOPMENTAL DAY SERVICES FOR PRESCHOOL CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS, DEVELOPMENTAL DISABILITIES OR ATYPICAL DEVELOPMENT

.2401 SCOPE

A developmental day service is a day/night service which provides individual habilitative programming for children with, or at risk for developmental delay, developmental disabilities or atypical development in specialized licensed child care centers. The service:

(1) is designed to meet developmental needs of the children such as self-help, physical, language and speech, and cognitive and psychosocial skills in order to facilitate their functioning in a less restrictive environment, as well as to meet child care needs of families; and

(2) offers family training and support.

Statutory Authority G.S. 143B-147.

.2402 STAFF

(a) Each developmental day center shall have a designated director who holds a bachelor level degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.

(b) Each staff member except student trainees and supervised volunteers shall be at least 18 years of age.

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

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

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

(f) If school aged children are served under contract with the Department of Public Instruction, a preschool handicapped, B-K, or special education certified teacher shall be employed for

each 20 children or less. The type of certification shall be based on the ages of the children served. When infants and toddlers are served, a professional privileged in accordance with the requirements of Part H of Individuals with Disabilities Education Act shall be employed for each 20 children or less. This material is adopted by reference and includes subsequent editions and amendments.

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

(h) Centers with at least 40% of their enrollment being children without disabilities, and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers, may utilize the following staff/child ratio:

(1) Infants - 1:4;

(2) Toddlers and older children - 1:6.

(i) The disciplines of social work, physical therapy, occupational therapy and speech and language therapy shall be available through center employees, consultants, or agreements with other providers.

(j) Each staff member shall have a current medical statement on file with the facility.

Statutory Authority G.S. 143B-147.

.2403 OPERATIONS

(a) Hours. Developmental day services for preschool children shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, twelve months a year.

(b) Daily Training Activities. Activities shall be planned around the following principles:

(1) Group and individual activities, related to individual goal plans, shall be scheduled daily.

(2) Both free play and organized recreational activities shall be provided. No more than one-third of the daily schedule shall be designated for both of these activities combined.

(c) Grouping of children. Grouping shall allow for attending to the individual needs of each child and reflect developmentally appropriate practices.

(d) Family Services:

(1) Parents shall be provided the opportunity to observe their child in the program.

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

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

.2404 PHYSICAL PLANT

(a) Classroom And Activity Space:

(1) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets, and other fixed equipment.

(2) Space shall be available for small groups and individualized training.

(3) Special interest areas shall be provided to enhance the development of individual children.

(4) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.

(5) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 35 square feet available per child for indoor classroom and activity space.

(b) Outdoor Activity Space:

(1) Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time.

(2) Centers with at least 40% of their enrollment being children without disabilities and having an inclusion plan approved by DMH/DD/SAS for area-operated programs and by the area program director for contract agency centers may have a total of 100 square feet available per child.

(c) Environmental Rating. Each center shall complete an environmental rating scale.

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

SECTION .2500 - EARLY CHILDHOOD INTERVENTION SERVICES (ECIS) FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAY, DISABILITIES, OR ATYPICAL DEVELOPMENT AND THEIR FAMILIES

.2501 SCOPE

(a) An early childhood intervention service (ECIS) is a periodic service designed to promote the developmental growth of children with or at risk for developmental delay, disabilities or atypical development, and their families. In addition, it provides families with support and information on child-rearing skills and management, and services and resources available to the child and family. The service provides, on a regularly scheduled basis, comprehensive assessment and prescriptive developmental programming in such areas as cognitive, language and communication, physical, self-help, and psychosocial skill development in the client's home which may be supplemented by individual or group services at other sites. This service provides case-specific and general follow-up and consultation to other preschool programs. Case management is also a component of this service.

(b) The primary methodology of service delivery is periodic (usually weekly) home visits which may be supplemented by group or individual activities at sites other than the child's home.

(c) This Section applies to those early intervention services that are available through the area programs and contract agencies.

Statutory Authority G.S. 143B-147; 20 USC 1471.

.2502 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".

(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.

(c) As used in this Section, an eligible child is an infant or toddler who meets the definition of "high risk children," "developmentally delayed children," or children with "atypical development" as defined in 10 NCAC 14V .0802, or "developmentally disabled" children as defined in G.S. 122C-3.

Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et.seq.

.2503 STAFF REQUIREMENTS

(a) Each ECIS shall have a designated program director who holds at least a baccalaureate degree in a field related to developmental disabilities, or is registered to practice as a registered nurse in the State of North Carolina, and who has at least one year's experience in services for infants or toddlers with or at risk for developmental delays or atypical development. This includes, but is not limited to early childhood education, child development, or special education.

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

(c) Staff shall be privileged in accordance with the requirements of Part H of the Individuals with Disabilities Education Act.

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

.2504 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 speech therapy 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) Assessments shall be conducted in accordance with 10 NCAC 14V .0314.

Statutory Authority G.S. 143B-147; 20 USC 1471.

.2505 FOLLOW-ALONG

Follow-along, a continuing relationship with the client for the purpose of assuring that the client's changing needs are recognized and apppropriately met, shall be provided semi-annually for one year on behalf of children who have been discharged from the ECIS.

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

SECTIONS .2600 - .3000 - RESERVED FOR FUTURE CODIFICATION

SECTION .3100 - NONHOSPITAL MEDICAL DETOXIFICATION FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.3101 SCOPE

(a) Nonhospital medical detoxification is a 24-hour residential facility which provides medical treatment and supportive services under the supervision of a physician.

(b) This facility is designed to withdraw an individual from alcohol or other drugs and to prepare him to enter a more extensive treatment and rehabilitation program.

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

.3102 STAFF

(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.

(b) The treatment of each client shall be under the supervision of a physician.

(c) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(d) Each facility shall have at least one staff member on duty at all times trained in the following areas:

(1) substance abuse withdrawal symptoms, including delirium tremens; and

(2) symptoms of secondary complications to substance abuse.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

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

.3103 OPERATIONS

(a) Monitoring Clients. Each facility shall have a written policy that requires:

(1) procedures for monitoring each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and

(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least every four hours for the first 24 hours and at least three times daily thereafter.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. The facility shall complete a

discharge plan for each client and refer each client who has completed detoxification to an outpatient or residential treatment/rehabilitation facility.

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

SECTION .3200 - SOCIAL SETTING DETOXIFICATION FOR SUBSTANCE ABUSE

.3201 SCOPE

(a) Social setting detoxification is a 24-hour residential facility which provides social support and other non-medical services to individuals who are experiencing physical withdrawal from alcohol and other drugs.

(b) Individuals receiving this service need a structured residential setting but are not in need of immediate medical services; however, back-up physician services shall be available, if indicated.

(c) The facility is designed to assist individuals in the withdrawal process and to prepare them to enter a more extensive treatment and rehabilitation program.

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

.3202 STAFF

(a) A minimum of one direct care staff member shall be on duty at all times for every nine or fewer clients.

(b) The services of a certified alcoholism counselor or a certified substance abuse counselor shall be available on an as-needed basis to each client.

(c) Each facility shall have at least one staff member on duty trained in the following areas:

(1) monitoring vital signs;

(2) alcohol withdrawal symptoms, including delirium tremens;

(3) symptoms of secondary complications to alcoholism.

(d) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

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

.3203 OPERATIONS

(a) Monitoring Clients. Each facility shall have a written policy that requires:

(1) procedures for monitoring each client's general condition and vital signs during at least the first 72 hours of the detoxification process; and

(2) procedures for monitoring and recording each client's pulse rate, blood pressure and temperature at least four times daily for the first 72 hours after admission.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. The facility shall complete a discharge plan for each client and refer each client who has completed detoxification to an outpatient or residential treatment or rehabilitation facility.

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

SECTION .3300 - OUTPATIENT DETOXIFICATION FOR SUBSTANCE ABUSE

.3301 SCOPE

An outpatient detoxification facility is a periodic service which provides services involving the provision of supportive services, particularly active support systems under the supervision of a physician for clients who are experiencing physical withdrawal from alcohol and other drugs.

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

.3302 STAFF

(a) The treatment of each client shall be under the supervision of a physician.

(b) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(c) Each facility shall have at least one staff member on duty trained in the following areas:

(1) monitoring vital signs;

(2) alcohol withdrawal symptoms, including delirium tremens;

(3) symptoms of secondary complications to alcoholism.

(d) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

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

.3303 OPERATIONS

(a) Hours. Each outpatient detoxification facility shall operate at least eight hours per day, for a minimum of five days per week.

(b) Discharge Planning And Referral To Treatment/Rehabilitation Facility. The facility shall complete a discharge plan for each client and refer each client who has completed detoxification to an outpatient or residential treatment or rehabilitation facility.

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

SECTION .3400 - RESIDENTIAL TREATMENT/ REHABILITATION FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3401 SCOPE

(a) A residential treatment or rehabilitation facility for alcohol or other drug abuse disorders is a 24-hour residential service which provides active treatment and a structured living environ-

ment for individuals with substance abuse disorders in a group setting.

(b) Individuals must have been detoxified prior to entering the facility.

(c) Services include individual, group and family counseling and education.

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

.3402 STAFF

(a) Staff are required as follows:

(1) One full-time certified alcoholism, drug abuse or substance abuse counselor for a facility having up to 30 beds and for every 30 bed increment or portion thereafter.

(2) One full-time qualified alcoholism, drug abuse or substance abuse professional or one full-time certified alcoholism, drug abuse or substance abuse counselor for facilities having 11 or more beds and for every ten bed increment or portion thereafter.

(b) A minimum of one staff member shall be present in the facility when clients are present in the facility.

(c) In facilities that serve minors, a minimum of one staff member for each five or fewer minor clients shall be on duty during waking hours when minor clients are present.

(d) Any qualified alcoholism, drug abuse or substance abuse professional who is not certified shall become certified by the North Carolina Substance Abuse Professional Certification Board within 26 months from the date of employment, or from the date an unqualified person meets the requirements to be qualified, whichever is later.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, and family therapy.

(f) Each direct care staff member in a facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

(g) Each facility shall have at least one staff member on duty trained in the following areas.

(1) alcohol and other drug withdrawal symptoms; and

(2) symptoms of secondary complications to alcoholism and drug addiction.

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

.3403 OPERATIONS

(a) Each facility shall provide or have access to the following services:

(1) individual, group or family therapy for each client;

(2) educational counseling;

(3) vocational counseling;

(4) job development and placement;

(5) money management;

(6) nutrition education; and

(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.

(b) The facility shall have a written schedule for daily routine activities.

(c) The facility shall establish a schedule for the provision of treatment and rehabilitation services.

(d) The facility shall complete a discharge plan for each client and refer each client who has completed residential treatment to an outpatient or residential/rehabilitation facility.

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

SECTION .3500 - OUTPATIENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3501 SCOPE

Outpatient facilities provide periodic service for individuals with substance abuse disorders. Outpatient services include individual, group, family, and educational counseling.

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

.3502 STAFF

(a) The services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available to each client.

(b) Each facility shall have at least one staff member on duty trained in the following areas:

(1) alcohol and other drug withdrawal symptoms; and

(2) symptoms of secondary complications to alcoholism and drug addiction.

(c) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

(d) Each direct care staff member in an outpatient facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

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

.3503 OPERATIONS

Group size shall be limited to a maximum of 20 participants.

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

SECTION .3600 - OUTPATIENT NARCOTIC ADDICTION TREATMENT

.3601 SCOPE

(a) An outpatient narcotic addiction treatment facility provides periodic services designed to offer the individual an opportunity to effect constructive changes in his lifestyle by using methadone or other medications approved for use in narcotic addiction treatment in conjunction with the provision of rehabilitation and medical services.

(b) Methadone and other medications approved for use in narcotic addiction treatment are also tools in the detoxification

and rehabilitation process of a narcotic dependent individual.

(c) For the purpose of detoxification, methadone and other medications approved for use in narcotic addiction treatment are administered in decreasing doses for a period not to exceed 180 days.

(d) For individuals with a history of being physiologically addicted to a narcotic for at least one year before admission to the service, methadone and other medications approved for use in narcotic addiction treatment may also be used in maintenance treatment. In these cases, methadone and other medications approved for use in narcotic addiction treatment may be administered or dispensed in excess of 180 days and should be administered in stable and clinically established dosage levels.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3602 DEFINITIONS

In addition to terms defined in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

(1) "Methadone" hydrochloride is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine, most prominent of which involves the central nervous system and organs composed of smooth muscle. The principal actions of therapeutic valve or analgesia and sedation are detoxification or temporary maintenance in narcotic addiction. The methadone abstinence syndrome, although quantitatively similar to that of morphine differs in that the onset is slower, the course more prolonged, and the symptoms are less severe.

(2) "Other medications approved for use in narcotic addiction treatment" means those medications approved by the Food and Drug Administration for use in narcotic addiction treatment and also approved for accepted medical uses under the North Carolina Controlled Substances Act.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3603 STAFF

(a) A minimum of one certified drug abuse counselor or certified substance abuse counselor to each 50 clients shall be on the staff of the facility. If the facility falls below this prescribed ratio, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.

(b) Each facility shall have at least one staff member on duty trained in the following areas:

(1) drug abuse withdrawal symptoms; and

(2) symptoms of secondary complications to drug addiction.

(c) Each direct care staff member shall receive continuing education to include understanding of the following:

(1) nature of addiction;

(2) the withdrawal syndrome;

(3) group and family therapy; and

(4) infectious diseases including HIV, sexually transmitted diseases and TB.

(d) Each facility shall have staff to provide or secure the following services:

(1) individual, group or family therapy for each client;

(2) educational counseling;

(3) vocational counseling;

(4) job development and placement,

(5) money management;

(6) nutrition education; and

(7) referrals to supportive services including Alcoholics Anonymous, Narcotics Anonymous, legal counseling, vocational training and placement.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505; 21 C.F.R. Part 1300.

.3604 OPERATIONS

(a) Hours. Each facility shall operate seven days per week, 12 months per year. Daily, weekend and holiday medication dispensing hours shall be scheduled to meet the needs of the client.

(b) Compliance With FDA/NIDA Regulations. Each facility shall be approved by the Food and Drug Administration of the United State Department of Health and Human Services and shall be in compliance with all Food and Drug Administration/National Institute on Drug Abuse Narcotic Addiction Treatment regulations in 21 C.F.R. Part 2 § 291.505. These regulations are available from the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857 at no cost. The material adopted by reference in this Rule includes subsequent amendments and editions of the referenced material.

(c) Compliance With DEA Regulations. Each facility shall be currently registered with the Federal Drug Enforcement Administration and shall be in compliance with all Drug Enforcement Administration regulations pertaining to narcotic addiction treatment programs codified in 21 C.F.R., Food and Drugs, Part 1300 to end. These regulations are available from the United States Government Printing Office, Washington, D.C. 20402 at a cost of four dollars and fifty cents ($4.50) per copy. The material adopted by reference in this Rule is adopted in accordance with the provisions of G.S. 150B-14(c).

(d) Compliance With State Authority Regulations. Each facility shall be approved by the State Authority for Narcotic Addiction Treatment, DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, N.C. 2760, which is the "state authority" as defined in the Food and Drug Administration/National Institute on Drug Abuse Narcotic Addiction Treatment Regulations in 21 C.F.R. Part 2, 291.505, and is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the state or territory for governing the treatment of narcotic addiction with a narcotic drug. The referenced material includes subsequent editions and amendments, and may be obtained from the Food and Drug Administration, Division

of Scientific Investigations, Regulatory Management Branch, 7520 Standish Place, Room 115, Rockville, Maryland 20855 at no cost.

(e) Take-Home Supplies For Holidays. Take-home dosages of methadone for holidays shall be authorized by the facility physician on an individual client basis according to the following.

(1) An additional one-day supply of methadone may be dispensed to each eligible client (regardless of time in treatment) for Independence Day, Thanksgiving, Christmas, New Year's and other official state holidays.

(2) No more than a three-day supply of methadone may be dispensed to any eligible client because of holidays. This restriction shall not apply to a client who is receiving a six-day take-home supply of methadone.

(f) Withdrawal From Medications For Use In Narcotic Addiction Treatment. The risks and benefits of withdrawal from methadone or other medications approved for use in narcotic addiction treatment shall be discussed with each client at the initiation of treatment and annually thereafter.

(g) Client Discharge Restrictions. No client shall be discharged from the facility while physically dependent upon methadone or other medications approved for use in narcotic addiction treatment unless the client is provided the opportunity to detoxify from the drug.

Statutory Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 2 § 291.505.

SECTION .3700 - DAY TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS

.3701 SCOPE

(a) Day treatment facilities provide services in a group setting for individuals who need more structured treatment for substance abuse than that provided by outpatient treatment, and may serve as an alternative to a 24-hour treatment program.

(b) Day treatment services shall have structured programs, which may include individual, group, and family counseling, recreational therapy, peer groups, substance abuse education, life skills education, and continuing care planning.

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

.3702 STAFF

(a) The staff of the day treatment facility shall include a minimum of one full-time or equivalent certified alcoholism, drug abuse or substance abuse counselor for every 16 or fewer clients.

(b) If the facility falls below the prescribed ratio in Paragraph (a) of this Rule, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.

(c) In facilities which provide services to minors, a minimum of two staff members shall be present with minor clients at all times, and a minimum ratio of one staff member to each eight or fewer clients shall be maintained. In the event that only one minor client is in the facility, only one staff member is required to be present.

(d) Each facility shall have at least one staff member on duty trained in the following areas:

(1) alcohol and other drug withdrawal symptoms; and

(2) symptoms of secondary complications due to alcoholism and drug addiction.

(e) Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.

(f) Each direct care staff member in a day treatment facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.

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

.3703 OPERATIONS

(a) Each day treatment facility shall operate at least three days per week, but not fewer than 12 hours per week.

(b) A client shall be provided a structured program of treatment for a minimum of five hours per week.

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

SECTION .3800 - ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS)

.3801 SCOPE

(a) An alcohol and drug education traffic school (ADETS) is a prevention and intervention service which provides an educational program primarily for first offenders convicted of driving while impaired as provided in G.S. 20-179(m).

(b) Provisions shall be made for family members and other non-students to attend classes if the instructor determines that their presence will not disrupt the class or result in class size exceeding the maximum.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.3802 STAFF

(a) Certification. Each class shall have a designated instructor who is certified by DMH/DD/SAS. An individual seeking initial certification as an instructor shall:

(1) be a high school graduate or its equivalent;

(2) have a working knowledge of alcohol, other drugs, and traffic safety issues;

(3) complete and submit the original and one copy of the application to the DWI/Criminal Justice Branch of DMH/DD/SAS;

(4) complete an initial in-service training program provided by DMH/DD/SAS; and

(5) demonstrate skills by teaching all classes.

(b) Notice. DMH/DD/SAS shall notify the applicant of the decision regarding initial certification within 60 days after receipt of the application.

(c) Duration. The duration of full certification shall be for a maximum period of two years.

(d) Provisional certification. An applicant who does not obtain initial certification may be issued a provisional certification, and shall be.

(1) informed as to the specific reasons why full certification was denied;

(2) provided with eligibility requirements necessary to reapply for full certification; and

(3) informed regarding the right to appeal the certification decision.

(e) Recertification:

(1) Individuals seeking recertification shall submit documentation of having received a minimum of 48 hours of training in alcohol and drug education traffic subjects during the previous two years. This training shall be provided by or subject to approval by DMH/DD/SAS. Documentation of having received this training shall be submitted to the DWI/Criminal Justice Branch at least 30 days prior to expiration of the current certification.

(2) An individual seeking recertification for each subsequent two-year cycle shall submit documentation of having received 30 hours of training in alcohol and drug education traffic subjects during the preceding two years;

(3) The training shall be provided or approved by DMH/DD/SAS; and

(4) Documentation of this training shall be submitted to the DWI/Criminal Justice Branch of DMH/DD/SAS at least 90 days prior to expiration of the existing certification.

(f) Revocation or suspension of certification may be issued for failure to:

(1) cover the required subjects outlined in the prescribed curriculum;

(2) maintain accurate student records;

(3) comply with certification requirements;

(4) report all students who complete the prescribed course to DMH/DD/SAS in a timely manner.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.3803 OPERATIONS

(a) Curriculum. School instructors shall use the curriculum specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools" (DMH/DD/SAS publication APSM 125-1, 130-1).

(1) The program of instruction shall consist of not less than ten hours of classroom instruction as specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools."

(2) Each school may provide up to three additional hours for classroom time and such activities as an initial student assessment, data gathering or a summary conference with students. Information regarding assessments is available in "Information for Conducting DWI Substance Abuse Assessments and Providing Treatment" (DMH/DD/SAS publication APSP 125-2, 130-2).

(b) Class Schedule. Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.

(1) Each student shall be scheduled to attend the first and the last class sessions in the order prescribed in the curriculum manual.

(2) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

(3) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with Subparagraph (b)(1) of this Rule.

(4) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.

(c) Class Size. Class size shall be limited to a maximum of 35 persons.

(d) Court Liaisons. Each school shall develop and implement written procedures of liaison with the court. These procedures shall be agreed upon and signed by the designated employee of the school and by the clerk of court, judge and district attorney. These procedures shall include at least the following:

(1) the procedure used to obtain referral of offenders from the court;

(2) a provision that the school will notify each student of the time, date, and location of assigned classes;

(3) the procedure for notifying the court of a student's successful completion of the course;

(4) communicating to students in writing the requirements for completing the course and developing a procedure to notify the court of non-compliance cases.

(e) DWI Services Certificates Of Completion. The original copy of the North Carolina Department of Human Resources DWI Services Certificates of Completion shall be forwarded to DMH/DD/SAS for review within two weeks of completion of all services.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

SECTION .3900 - DRUG EDUCATION SCHOOLS (DES)

.3901 SCOPE

A drug education school (DES) is a prevention and intervention service which provides an educational program for drug offenders as provided in the North Carolina Controlled Substances Act and Regulations.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.3902 STAFF

Each class shall have a designated instructor who is certified by the DMH/DD/SAS.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.3903 OPERATIONS

(a) Population Served:

(1) Each school shall be designed primarily to serve individuals who are using drugs at the experimental, social-recreational or abusive levels, but who are not drug dependent or engaged in drug dealing.

(2) First offenders referred by the court in accordance with G.S. 90-96 and G.S. 90-113.14 (Conditional Discharges and Expunction of Records for First Offense) shall be served.

(3) Each school shall establish a written policy regarding participation of persons referred from other sources. These persons may be enrolled on a space-available basis.

(b) Initial assessment. Each school shall provide an initial assessment for each potential student prior to the first class session to determine whether the student is eligible to attend the school and to determine if referral to a treatment resource is appropriate.

(c) Class Size:

(1) Class size shall be limited to a maximum of 35 participants; however, the affective education portions of the class shall be limited to a maximum of 20 participants.

(2) Provisions shall be made for family members and guardians of students to audit classes; however, such individuals shall not be counted in the maximum class size.

(d) Curriculum. School instructors shall use the curriculum specified in the "North Carolina Curriculum Manual for Drug Education Schools" (DMH/DD/SAS publication APSM 125-2):

(1) The program of instruction shall consist of not less than 15 hours of classroom instruction as specified in "The North Carolina Curriculum Manual for Drug Education Schools."

(2) Each school may provide up to five additional hours of activity for classroom time and such activities as parent/child communication session, data gathering or a summary conference with students.

(e) Class Schedule. Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.

(1) Each student shall be scheduled to attend all sessions as described in the approved curriculum.

(2) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

(3) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with (b) of this Standard.

(4) Students shall have an opportunity to complete classes within the 150 day time limit for the course specified in G.S. 90-96 and 90-113.14 (Conditional Discharges and Expunction of Records for First Offense). The course instructor shall monitor the 150 day time limit and notify the court if the student does not complete the school within that time limit.

(5) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.

(f) Court Liaison:

(1) Each school shall develop and implement written procedures of liaison with the court. These procedures shall include at least the following:

(A) the procedure used to obtain referral of offenders from the court;

(B) a provision that the school will notify each student of the time, date, and location of assigned classes;

(C) the procedure for notifying the court of a student's successful completion of the course;

(D) communicating to students in writing the requirements for successfully completing the course and developing a procedure to notify the court of noncompliance cases.

(2) These procedures shall be agreed upon and signed by the designated employee of the school and, if possible, by the clerk of court, judge and district attorney.

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

SECTION .4000 - TREATMENT ACCOUNTABILITY FOR SAFER COMMUNITIES (TASC)

.4001 SCOPE

(a) Treatment Accountability for Safer Communities (TASC) is a service designed to offer a supervised community-based alternative to incarceration or potential incarceration primarily to individuals who are alcohol or other drug abusers, but also to individuals who are mentally ill or developmentally disabled and who are involved in crimes of a non-violent nature.

(b) This service provides a liaison between the criminal justice system and alcohol and other drug treatment and educational services. It provides screening, identification, evaluation, referral and monitoring of alcohol or other drug abusers for the criminal justice system.

Statutory Authority G.S. 143B-147.

.4002 STAFF

(a) Each TASC staff member shall have a baccalaureate degree in either criminal justice or human service related fields

or an associate of arts degree with four years experience in criminal justice or human service related fields.

(b) TASC personnel shall receive continuing education in the following areas:

(1) the physiological, sociological and psychological correlates of substance abuse;

(2) substance abuse treatment;

(3) judicial and political issues related to substance abuse; and

(4) substance abuse treatment and rehabilitation resources.

(c) Each TASC program shall provide its staff with:

(1) a revised and documented training plan, completed annually;

(2) a schedule for implementation of the plan,

(3) documentation of at least 32 hours annually of TASC relevant training which shall include, but need not be limited to, the following:

(A) TASC mission and philosophy;

(B) pharmacology;

(C) sentencing practices;

(D) assessment of drug dependency;

(E) substance abuse treatment modalities and expectations; and

(F) case management.

Statutory Authority G.S. 143B-147.

.4003 OPERATIONS

(a) Population Served. Each TASC program shall be designed to serve individuals who have a documented substance abuse problem and who are involved with the criminal justice system.

(b) Screening and Identification. Each TASC program shall:

(1) provide to potential referral sources a process by which identification, screening and referrals may be accomplished. The process shall include:

(A) procedures which delineate the method for identifying TASC-eligible clients;

(B) documented evidence that the program is seeking to have clients referred to it through the justice system. This evidence shall be in the form of a written agreement that shall be signed by the appropriate local judicial official;

(C) eligibility criteria for TASC client participation; and

(D) written evidence that cooperating justice system component and treatment agencies are aware of, and have a clear understanding of, who is eligible to receive TASC services.

(2) maintain a listing of community-based treatment, education, and other referral services that includes admission and referral criteria.

(c) Evaluation. Each TASC program shall conduct or secure an assessment or evaluation for each prospective client referred from the criminal justice system which shall include:

(1) documentation that a standardized TASC assessment process is utilized to ensure that all eligibility criteria are met and that standardized TASC assessment instruments and procedures are used to confirm:

(A) a substance abuse dysfunction;

(B) current criminal charges; and

(C) client criminal history.

(2) a face to face assessment interview.

(d) Referral. Each TASC program shall ensure that:

(1) each client is referred to an appropriate level of care within 48 hours of the TASC assessment. In the event that immediate placement is unavailable, office monitoring shall be provided.

(2) documentation in the signed agreement indicates that the potential TASC client has been informed and understands program requirements.

(e) Monitoring/Reporting. Each TASC program shall develop and implement a monitoring and reporting procedure for each client, which shall include, but need not be limited to:

(1) notification to the criminal justice system component and treatment provider of each client's TASC acceptance;

(2) an approved individual TASC case management completed by the TASC program and the client within 30 days of admission;

(3) documentation requirements for monthly progress reports from the TASC program to the referring agency;

(4) notification, within 24 hours, of any client's TASC termination; and

(5) documentation in the TASC file of progress for each TASC client from admission to discharge.

(f) Success/Failure Criteria:

(1) Each TASC program shall develop and implement procedures to measure client success or failure, including readmission criteria.

(2) All cooperating justice system components and treatment agencies shall be aware of this criteria as documented in a signed agreement.

(g) Management Information System. Each TASC program shall report, monthly, to the DWI/Criminal Justice Branch, TASC program data using the standardized data form approved by the DMH/DD/SAS.

(h) TASC Unit Organization:

(1) Each area program or contract agency shall ensure that TASC is recognized as a distinct service and include it on the organizational chart.

(2) The area program and/or contract agency shall appoint a qualified TASC administrator with a specific job description.

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

SECTION .4100 - THERAPEUTIC HOMES FOR INDIVIDUALS WITH SUBSTANCE ABUSE DISORDERS AND THEIR CHILDREN

.4101 SCOPE

(a) A therapeutic home is a 24-hour professionally supervised residential facility which provides trained staff who work intensively with individuals with substance abuse disorders who provide or have the potential to provide primary care for their children.

(b) These programs shall include assessment/referral, individual and group therapy, therapeutic parenting skills, basic independent living skills, educational groups, child supervision, aftercare, follow-up and access to preventive and primary health care.

(c) The facility may utilize services from another facility providing treatment, support or medical services.

(d) Services are designed to provide a safe and healthy environment for clients and their children.

(e) Each facility shall assist the individual with the development of independent living skills in preparation for community based living.

Statutory Authority G.S. 143B-147.

.4102 STAFF

(a) Each individual and child admitted to a facility shall receive services from a qualified professional as appropriate to his or her needs who has responsibility for the client's treatment program. Each individual and child shall receive age-appropriate, therapeutic professional services.

(b) A minimum of one staff member shall be present in the facility with an individual at all times unless the designated qualified professional has documented in the individual client plan that the client may be without supervision in certain clearly delineated instances.

(c) A minimum of one staff member shall be present when one or more children are in the facility.

(d) Each individual identified as a therapeutic residential staff member shall receive pre-service training in the following areas:

(1) Confidentiality;
(2) Client rights;
(3) Crisis management;
(4) Developmentally appropriate child behavior management;
(5) Medication education and administration;
(6) Symptoms of secondary complications to substance abuse or drug addition;
(7) Signs and symptoms of pre-term labor; and
(8) Signs and symptoms of post-partum complications.

(e) Adequate training to support the therapeutic process shall also be provided to all therapeutic residential staff in the following areas within 60 days of employment:

(1) therapeutic parenting skills;
(2) dynamics and needs of emotionally disturbed and substance abusing individuals and their children;
(3) multi-cultural and gender specific issues;
(4) ssues of substance abuse and the process of recovery;
(5) HIV/AIDS;
(6) sexually transmitted diseases;
(7) drug screening;
(8) domestic violence, sexual abuse, and sexual assault;
(9) pregnancy: delivery and well child care; and
(10) infant feeding, including breast feeding.

Statutory Authority G.S. 143B-147.

.4103 OPERATIONS

(a) Admissions:

(1) Admission to the facility shall be a joint decision of the designated qualified professional, the provider of residential care, and the individual.
(2) The individual shall have the opportunity for at least one pre-admission visit to the facility except for an emergency admission.

(b) Coordination Of Treatment And Education To Children In The Facility. The appropriate education program for a child shall be coordinated with his/her treatment/habilitation plan.

(c) Emergency Medical Services. Each facility will ensure the availability of emergency medical services to include:

(1) Immediate access to a physician;
(2) Acute care hospital services, and
(3) Assistance from a local ambulance service, rescue squad or other trained medical personnel within 20 minutes of the facility.

(d) Schedules:

(1) The facility shall have a written schedule for daily routine activities.
(2) The facility shall establish a schedule for the provision of treatment and ehabilitation services.

Statutory Authority G.S. 143B-147.

.4104 PHYSICAL PLANT

(a) Each facility shall have the capacity to serve a minimum of three individuals.

(b) Client bedrooms shall have at least 80 square feet for a single occupancy and the following additional square feet for clients' children:

(1) 40 square feet for each infant and toddler;
(2) 60 square feet for each pre-school age child; and
(3) 80 square feet for each child above age six.

Statutory Authority G.S. 143B-147.

SECTION .4200 - .4900 - RESERVED FOR FUTURE CODIFICATION

SECTION .5000 - FACILITY BASED CRISIS SERVICE FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5001 SCOPE

(a) A facility-based crisis service for individuals who have a mental illness, developmental disability or substance abuse disorder is a 24-hour residential facility which provides disability-specific care and treatment in a nonhospital setting for

individuals in crisis who need short-term intensive evaluation, or treatment intervention or behavioral management to stabilize acute or crisis situations.

(b) This facility is designed as a time-limited alternative to hospitalization for an individual in crisis.

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

.5002 STAFF

(a) Staff supervision shall be provided by a qualified professional as appropriate to the client's needs.

(b) Staff with training and experience in the provision of care to the needs of the clients shall be present at all times.

(c) A physician shall be on call on a 24-hour per day basis.

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

SECTION .5100 - COMMUNITY RESPITE SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5101 SCOPE

(a) Community respite is a service which provides periodic relief for a family or family substitute on a temporary basis. While overnight care is available, community respite services may be provided for periods of less than 24 hours on a day or evening basis. Respite care may be provided by the following models:

(1) Center-based respite - the individual is served at a designated facility. While an overnight capacity is generally a part of this service, a respite center may provide respite services to individuals for periods of less than 24 hours on a day or evening basis.

(2) Private home respite - the individual is served in the provider's home on an hourly or overnight basis.

(b) Private home respite services serving individuals are subject to licensure under G.S. 122C, Article 2 when:

(1) more than two individuals are served concurrently; or

(2) either one or two children, two adults, or any combination thereof are served for a cumulative period of time exceeding 240 hours per calendar month.

Statutory Authority G.S. 122C-22(a)(8); 122C-26; 143B-147.

.5102 STAFF

(a) The Program Director shall be either:

(1) a graduate of a college or university with a four-year degree in human service-related field; or

(2) a high school graduate or equivalent with at least three years of experience in human service programming.

(b) All staff shall be at least 18 years of age except those who are 16 or 17 years of age and who are working directly under the supervision of an experienced employee.

(c) Each staff member shall have a current medical statement on file with the facility.

(d) The following minimum staff requirements apply to community center-based respites:

(1) During waking hours, in a facility that serves four or more clients, a minimum of two staff members shall be on duty when five or fewer clients are in the facility. If more than five clients are being served, a minimum ratio of one staff member for every additional five or fewer clients shall be maintained.

(2) During waking hours, in a facility that serves three or fewer clients, a minimum of two staff members shall be on duty unless emergency backup procedures are sufficient to allow only one staff member on duty.

(3) During sleeping hours, a minimum of two staff members shall be available in the immediate area unless emergency backup procedures are sufficient to allow only one staff member on duty.

(4) On occasions when only one client is in the facility, a minimum of one staff member shall be on duty during waking and sleeping hours.

(e) In a private home respite, at least one approved respite provider who has a basic understanding of the client's disability shall supervise the client at all times.

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

.5103 OPERATIONS

(a) The governing body shall maintain an application for each provider of private home respite which includes the following:

(1) identifying information;

(2) preference of time when respite care can be provided;

(3) age and sex preference of respite clients.

(b) Only the respite program director or his designee shall arrange respite care between the client's family and the respite provider.

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

.5104 PHYSICAL PLANT

In private home respite services:

(1) A minimum of one ionized smoke detector wired into the house current shall be installed and centrally located. Additional smoke detectors that are not wired into the house current shall be checked at least monthly by the provider.

(2) A dry powder or CO(2) type fire extinguisher shall be located in the kitchen and shall be checked at least annually by the local fire department. Each provider of respite care shall receive instruction in its use prior to the initiation of service.

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

SECTION .5200 - RESIDENTIAL THERAPEUTIC (HABILITATIVE) CAMPS FOR CHILDREN AND ADOLESCENTS OF ALL DISABILITY GROUPS

.5201 SCOPE

(a) A residential therapeutic (habilitative) camp is a residential treatment facility provided in a camping environment which is designed to help individuals develop behavior control, coping skills, self-esteem and interpersonal skills.

(b) Services may include supervised peer interaction, provision of healthy adult role models, and supervised recreational, educational and therapeutic experiences.

(c) Each facility shall be designed to serve children and adolescents six through 17 years of age who have mental illness, developmental disability or substance abuse disorders.

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

.5202 STAFF

(a) Each facility designed primarily to serve campers who are emotionally disturbed, have a mental illness, developmental disability or substance abuse, shall have a program director who has:

(1) a minimum of two years' experience in child or adolescent services specific to the camper's needs; and

(2) who has camping experience, and who has educational preparation in administrative, education, social work, nursing, psychology or a related field.

(b) A minimum of two staff members shall be on duty for every eight or fewer campers.

(c) Emergency medical treatment shall be available within one hour of the facility.

(d) Psychiatric consultation shall be available to the facility.

(e) An emergency on-call staff shall be readily available by page and able to reach campers within one hour.

(f) Staff assigned to the facility shall be trained to manage the children or adolescents individually and as a group.

(g) Each staff member who works directly and on a regularly scheduled basis with clients shall have a current medical statement on file with the facility.

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

.5203 OPERATIONS

(a) Each facility shall develop and implement written policies and procedures on basic care and safety.

(b) In accordance with the schedules developed by the Program Director, staff shall maintain the following distance from the campers:

(1) During waking hours, staff shall be within sight or voice range of the campers.

(2) During sleeping hours, staff shall be located within voice range of the campers.

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

.5204 PHYSICAL PLANT

(a) All sleeping units shall provide at least the following space:

(1) 30 square feet per person;

(2) six feet between heads of sleepers; and

(3) 30 inches between sides of beds.

(b) A minimum of the following shall be provided:

(1) one shower head for each ten individuals;

(2) one flush toilet for each ten individuals; and

(3) one handwashing facility, adjacent to toilet facilities, for each 20 individuals.

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

SECTION .5300 - THERAPEUTIC HOMES FOR CHILDREN AND ADOLESCENTS

.5301 SCOPE

(a) A therapeutic home is a 24-hour residential facility located in a private residence which provides professionally trained parent-substitutes who work intensively with children and adolescents who are emotionally disturbed or have a substance problem, or both.

(b) The parent substitute:

(1) provides for intensive living, social, therapeutic and skill-learning needs; and

(2) receives close supervision and support from a qualified professional.

(c) The facility may utilize services from a facility providing treatment services such as outpatient or day treatment.

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

.5302 STAFF

(a) Each client admitted to a facility shall receive services from a designated qualified mental health professional or qualified substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.

(1) Each facility shall have a qualified mental health professional or clinical consultation by a qualified mental health professional if a mental health client resides in the facility.

(2) A facility shall have a qualified alcoholism, drug abuse or substance abuse professional or clinical consultation provided by a qualified alcoholism, drug abuse or substance abuse professional at least once a week if a substance abuser resides in the facility.

(b) A minimum of one therapeutic home parent shall be present with clients at all times unless the designated qualified professional has documented in the individual client plan that the client may be without supervision in certain clearly delineated instances.

(c) The individual identified as the therapeutic home parent shall receive training in treatment services which 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.

.5303 OPERATIONS

(a) Each facility shall serve no more than two clients.

(b) There shall be a written agreement with the therapeutic home parent, and the designated qualified professional or placement agency which includes, but is not limited to, the following:

(1) the responsibility of the provider;
(2) confidentiality requirements; and
(3) responsibility and procedures for securing emergency services.

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

(d) A copy of the agreement shall be given to the therapeutic home parents.

(e) Each agency which provides services through contracts with the therapeutic home parents to serve clients in their home shall maintain an application file which includes identifying information.

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

SECTION .5400 - DAY ACTIVITY FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5401 SCOPE

(a) Day activity is a day/night facility that provides supervision and an organized program during a substantial part of the day in a group setting to individuals who are mentally ill, developmentally disabled or have substance abuse disorders.

(b) Participation may be on a scheduled or drop-in basis.

(c) The service is designed to support the individual's personal independence and promote social, physical and emotional well-being through activities such as social skills development, leisure activities, training in daily living skills, improvement of health status, and utilization of community resources.

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

.5402 STAFF

(a) Each client admitted to a facility shall receive services from a designated qualified mental health, developmental disability or substance abuse professional, as appropriate, who has responsibility for the client's treatment, program or case management plan.

(b) Each facility shall have at least one staff member on site at all times when clients are present in the facility.

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

.5403 OPERATIONS

Each day activity facility shall be available three or more hours a day on a regularly scheduled basis at least once a week.

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

SECTION .5500 - SHELTERED WORKSHOPS FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5501 SCOPE

(a) A sheltered workshop is a day/night facility which provides work-oriented services including various combinations of evaluation, developmental skills training, vocational adjustment, job placement, and sheltered employment to individuals of all disability groups 16 years of age or over who have potential for gainful employment.

(b) This service is designed for individuals who have demonstrated that they do not require the intensive training and structure found in programs such as Adult Developmental Activity Programs (ADAP) but have not yet acquired the skills necessary for competitive employment. It provides the individual opportunity to acquire and maintain life skills including appropriate work habits, specific job skills, self-help skills, socialization skills, and communication skills.

(c) This service focuses on productive work activities for individuals who have potential for gainful employment as determined by Vocational Rehabilitation Services or the ability to participate in a sheltered employment program. Sheltered workshops are subject to Department of Labor Federal Wage and Hour Guidelines for the Handicapped.

(d) The Rules in this Section specify licensure requirements applicable to sheltered workshops which serve individuals who are primarily mentally retarded or otherwise developmentally disabled; however, individuals with mental illness, with substance abuse disorders and severely physically disabled individuals may also be served within a sheltered workshop.

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

.5502 STAFF

(a) Each facility shall have a designated full-time program director who shall have a baccalaureate degree with one year of experience in developmental disability rehabilitation programming; be a high school graduate or equivalent with three years of experience in developmental disability programming; or be a high school graduate or equivalent with three years of experience in business or personnel management.

(b) Each facility shall have a designated program coordinator who shall have a baccalaureate degree with one year of

experience in developmental disability programming or be a high school graduate or equivalent with three years of experience in mental retardation or other developmental disability programming.

(c) At least one staff member shall be designated as a client evaluator who shall have at least a high school diploma, and shall have completed a five day inservice training program in the evaluation component of a licensed ADAP or sheltered workshop or in another training program approved by DMH/DD/SAS.

(d) Each facility shall maintain an overall direct service ratio of at least one full-time or full-time equivalent direct care staff member for every ten or fewer clients.

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

.5503 OPERATIONS

(a) Hours. Each facility shall be available for client attendance at least six hours per day (exclusive of transportation time), five days per week.

(b) Business Practices:

(1) Supplies, materials or tools, if provided by the sheltered workshop, shall be identified as a separate amount in the bid price.

(2) Wages paid to clients shall be on a piece rate or hourly commensurate wage.

(3) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions.

(4) Prices for goods produced in the facility shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(c) Safety Committee. A safety committee comprised of staff members and client representatives shall be appointed to review accident reports and to monitor the facility for safety. Minutes shall be kept of all meetings.

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

SECTION .5600 - SUPERVISED LIVING FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5601 SCOPE

(a) Supervised living is a 24-hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.

(b) A supervised living facility shall be licensed if the facility serves:

(1) one or more minor clients; or

(2) two or more adult clients.

Statutory Authority G.S. 143B-147.

.5602 STAFF

(a) Staff-client ratios shall be determined so as to enable staff to respond to individualized client needs.

(b) A minimum of one staff member shall be present at all times when any adult client is on the premises, except when the client has been deemed capable of remaining in the home without supervision for a specified time by a qualified professional of the operating agency or area program. The approval shall be documented .

(c) Staff shall be present in a facility in the following client-staff ratios when more than one child or adolescent client is present:

(1) children or adolescents with mental illness or emotional disturbance shall be served with one staff present for every four or fewer clients present;

(2) children or adolescents with substance abuse disorders shall be served with a inimum of one staff present for every five or fewer minor clients present during waking hours. However, only one staff member need be present during sleeping hours if emergency back-up procedures as determined by the governing body are sufficient to allow only one staff member on duty; or

(3) children or adolescents with developmental disabilities shall be served with one staff present for every one to three clients present and two staff for every four or more clients present. However, only one staff member need be present during sleeping hours if emergency back-up procedures are sufficient to allow only one staff member on duty.

(d) In facilities which serve clients who have substance abuse disorders:

(1) at least one staff member who is on duty shall be trained in alcohol and other drug withdrawal symptoms and symptoms of secondary omplications to alcohol and other drug addiction;

(2) when the clients are minors, staff shall be trained in youth development and therapeutic techniques in working with youth; and

(3) the services of a certified alcoholism counselor, a certified drug abuse counselor or a certified substance abuse counselor shall be available on an as-needed basis for each client.

(e) In facilities which serve individuals with behavior disorders in addition to developmental disabilities, the staff shall include at least one staff member who has received training in the area of behavior management through educational preparation in special education, psychology or a closely related field.

(f) Each staff member who works directly with clients shall have a current medical statement on file with the facility.

Statutory Authority G.S. 143B-147.

.5603 OPERATIONS

(a) Capacity:

(1) A facility shall serve no more than three clients

when:

(A) the client lives with a family; and

(B) the family provides the service.

(2) A facility shall serve no more than six clients when the clients have mental illness or developmental disabilities.

(3) Any facility licensed on April 1, 1994, and providing services to more than six clients at that time, may continue to provide services at no more than the facility's licensed capacity as of April 1, 1994.

(b) Service Coordination. Coordination shall be maintained between the facility operator and the qualified professional who is responsible for treatment/habilitation or case management.

(c) Participation of the Family or Legally Responsible Person:

(1) Each client's family shall be provided the opportunity to maintain an ngoing relationship with their relative through such means as family visits to the facility and visits with the family outside the facility.

(2) Reports to the parent of a minor resident, or the legally responsible person of an adult resident, shall be submitted at least annually. Reports may be in writing or take the form of a conference and shall focus on the client's progress toward meeting individual goals.

Statutory Authority G.S. 143B-147.

SECTION .5700 - ASSERTIVE COMMUNITY TREATMENT SERVICE

.5701 SCOPE

(a) Assertive community treatment (ACT) services shall be provided to individuals with serious mental illness, developmental disabilities, and/or substance abuse diagnoses who:

(1) may have a pattern of frequent use of crisis services; repeated hospitalizations or incarceration;

(2) may have failed to remain engaged in or to respond to conventional services; or

(3) have been determined to have unusual needs.

Such individuals require intervention by an Assertive Community Treatment Team (ACTT) in order to provide ongoing assertive treatment and services that are made available outside clinic settings in order to address their treatment needs effectively.

(b) The Assertive Community Treatment Team provides a service by an interdisciplinary team that ensures service availability 24 hours a day and is prepared to carry out a full range of treatment functions wherever and whenever needed. The objectives of the service include:

(1) preventing or reducing symptoms or behaviors that may result in the need for recurrent use of inpatient services or incarceration; and

(2) increasing the skills and behaviors that enhance the individual's ability to remain in the community.

Statutory Authority G.S. 143B-147.

.5702 STAFF

(a) Team Composition. The team should be interdisciplinary in order to carry out the varied activities needed to meet the complex needs of clients and shall include:

(1) a qualified professional, appropriate to the diagnoses of the clients being served;

(2) a Registered nurse;

(3) an MD (at least .25 FTE per 50 clients); and

(4) one or more appropriately trained paraprofessional staff.

(b) Team Qualifications. Each member of the team shall be privileged and supervised based on their training, experience, and qualifications.

(c) Client To Staff Ratio. The client/staff ratio should be based on the needs of the clients for whom the team is assigned responsibility. The usual client/staff ratio would be 10 to 1, and shall not exceed 12 to 1.

(d) Organization And Operation Of The Team. The area program shall develop a program description and policies that address the following:

(1) team composition consistent with staffing pattern based on anticipated client population and with the team composition, client/staff ratio, and staff qualifications described above;

(2) training and supervision (including initial and ongoing cross-disability training if applicable);

(3) communication between and among team members regarding clients' condition by assignment of daily staff responsibilities and regular, frequent staffing;

(4) days and hours of operation;

(5) after-hours plan including on-call coverage and linkages with appropriate after-hours emergency services;

(6) client selection procedures and criteria consistent with this service definition;

(7) description of service provision by ACTT and provisions for rapid access to consultation from other professionals as needed; and

(8) policies regarding Quality Assurance and Quality Improvement including outcome measures.

Statutory Authority G.S. 143B-147.

.5703 OPERATIONS

(a) Objectives. The treatment objectives are addressed by activities designed to:

(1) promote symptom stability and appropriate use of medication;

(2) restore personal, community living and social skills;

(3) promote and maintain physical health;

(4) establish access to entitlements, housing, and work and social opportunities; and

(5) promote and maintain the highest possible level of functioning in the community.

(b) Client Selection Criteria. Eligibility for ACT services

shall be determined on the basis of a comprehensive assessment and shall meet criteria Subparagraphs (b)(1), (2), and (3) of this Rule:

(1) A diagnosis of a serious mental illness, developmental disability or substance abuse;

(2) Unusual needs that have required intensive service provision as evidenced by one or more of the following:

(A) an established pattern of frequent use of crisis services, emergency rooms or incarceration related to the diagnosed disorder;

(B) a history of multiple admissions to psychiatric or substance abuse inpatient treatment facilities or multiple emergency admissions to Mental Retardation Centers or respite facilities; or

(C) a history of frequent contacts or referral to protective service or the criminal justice system (including juvenile detention and training schools) secondary to severely dysfunctional or obviously dangerous behavior; and

(3) Have symptoms and behaviors as evidenced by one or more of the following:

(A) a history of alcohol and drug abuse in combination with psychiatric symptoms or other serious medical or physical problems;

(B) a pattern of isolation with extremely poor or nonexistent social or family support;

(C) a pattern of inability to provide for basic needs for food, clothing, and shelter;

(D) a pattern of urgent and severe psychiatric and other concomitant medical difficulties; or

(E) have failed to remain engaged in or to respond to conventional services (such as case management, medication, outpatient treatment, or day programs).

(c) Criteria For Continued Eligibility Of ACT Services:

(1) If a client's needs can be adequately and appropriately addressed with an average of less than seven face-to-face contacts per month during any three-consecutive-month period, the treatment plan shall be reviewed to determine whether other less intensive service alternatives should be provided instead of ACT services.

(2) If it is determined that less intensive services could meet a client's needs over the long run, the reasons should be documented, and the client should no longer be eligible for ACT services.

Statutory Authority G.S. 143B-147.

SECTION .5800 - SUPPORTED EMPLOYMENT FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5801 SCOPE

(a) A supported employment program is a facility that provides periodic support services for adults with substantial developmental disability, severe physical disability, mental illness or substance abuse disorders to prepare the individual to work as independently as possible.

(b) Supported employment encompasses a variety of services. These include vocational evaluation, job development, intensive training, and long-term support. Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided.

(c) The Rules contained in this Section are applicable to two specific models of supported employment services:

(1) Supported Employment. All of the training activities in this model occur in a separate location in the community, not in a specialized facility maintained by the operator.

(2) Supported Employment - Long-Term Support. Clients served in this model have successfully completed the intensive initial training phase of supported employment sponsored by the Division for Vocational Rehabilitation Services, and now are receiving those long-term support services targeted towards maintenance in the job, which are the responsibility of DMH/DD/SAS:

(A) At a minimum these services provide monthly monitoring at the work site of each individual in supported employment in order to assess employment stability, unless the individualized written rehabilitation plan specifies a different monitoring schedule or off-site monitoring, which is based on client request.

(B) Examples of such long-term support services include "refresher" vocational training to ensure that existing job skills are not lost, training in new job performance expectations, and consultation to other employees, employers, and families, and residential program staff.

(d) Whatever the model, it is the supported employment that is subject to licensure, not the location of the business or organization where the client is placed for work.

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

.5802 STAFF

(a) Each supported employment facility shall have a designated program director.

(b) The Program Director shall be at least a high school graduate or equivalent with three years of experience in the appropriate disabilities programs.

(c) Each facility shall provide for client evaluation.

(d) Any person providing evaluation services shall have a high school diploma.

(e) In group supported employment models, such as the mobile crew or enclave, each supported employment shall maintain an overall direct service ratio of at least one full-time equivalent direct service staff member for each eight or fewer clients.

(f) In individual placement models, such as job coach, the amount of staff contact time per client shall be individualized

based on client needs and goals as identified in the Individual Program Plan.

(g) Each facility shall have an Admissions Committee.

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

.5803 OPERATIONS

(a) Population Served. Each supported employment program shall be designed primarily to serve individuals who are 16 years of age or older.

(b) Business Practices:

(1) If the supported employment seeks or receives remuneration for goods or services provided to another individual, organization or business:

(A) Supplies, materials or tools, if provided by the supported employment, shall be identified as a separate amount in the bid price;

(B) Wages paid to supported employment clients shall be on a piece rate or hourly commensurate wage;

(C) Each client involved in productive work shall receive a written statement for each pay period which indicates gross pay, hours worked and deductions; and

(D) Prices for goods produced in the supported employment shall be equal to or exceed the cost of production (including commensurate wages, overhead, tools and materials).

(2) If the client is an employee of another individual, organization or business, the supported employment shall review client earnings information on at least an annual basis to ensure appropriateness of pay rates and amounts.

(3) Clients shall be counseled concerning their rights and responsibilities in such matters as wages, hours, working conditions, social security, redress for injury and the consequences of their own tortuous or unethical conduct.

(c) Handbook. Each supported employee shall have a client handbook including, but not limited to, information about services and activities:

(1) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.

(2) Each client shall be given a handbook, and the handbook shall be reviewed with the client.

(d) Safety Educational Program. Supported employment services shall include the teaching of accident prevention and occupational safety specific to the job duties of each vocational placement.

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

.5804 CLIENT ELIGIBILITY AND ADMISSIONS

(a) Eligibility. Clients served shall be eligible for supported employment regardless of financial resources with the exception of a client whose work earnings exceed 60% of the federal statutory minimum wage over a consecutive 90-day period:

(1) with prior approval of the appropriate area program director or designee, clients who are participating in a supported employment program authorized by DMH/DD/SAS may have earnings in excess of 60% the prevailing wage.

(2) eligibility for clients in non-supported employment settings whose earnings have exceeded over 60% the prevailing wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation; or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services.

(3) the eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional.

(A) Requests for the extension shall be based on a joint case review involving a representative of the involved area program, the local VR unit and the area program.

(B) The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for addressing these deficits.

(C) The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.

(b) Admissions. Each supported employment facility shall have written admission policies and procedures.

(1) A pre-admission staffing shall be held for each client considered for admission to the supported employment program. During the staffing, the Admissions Committee shall consider information available regarding the client's medical, psychological, social, and vocational histories.

(2) Results of the pre-admission staffing shall be documented and forwarded to the referral or sponsoring agency. A representative of the Admissions Committee shall notify the client.

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

SECTION .5900 - CASE MANAGEMENT FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.5901 SCOPE

(a) Case management is a support service through which planning and coordination of services are carried out on behalf of the individual. It is designed to integrate multiple services needed or being received by the individual from the area

program or from other agencies with those services being received through the area program.

(b) Case management may include advocacy on behalf of the individual and monitoring the provision of services to the individual. Within this context, case management assists an individual in meeting his total needs by linking the individual to evaluation, treatment, educational, vocational, residential, health, financial, social, and any other needed services.

(c) The extent to which case management services are provided will vary according to the needs of the client. The area program which may elect to provide case management through a variety of models such as:

(1) primary therapist;
(2) contract with a private agency;
(3) disability-specific case managers; and
(4) area operated case management units.

Statutory Authority G.S. 143B-147.

.5902 STAFF

When infants, toddlers and preschoolers are served, the case manager shall have demonstrated knowledge and understanding about:

(1) infants and toddlers with or at risk for developmental delays or atypical development;
(2) Part H of the Individuals with Disabilities Education Act, the federal regulations related to it and relevant state statutes and standards;
(3) effective and appropriate help-giving behaviors; and
(4) the nature and scope of the services available under the state's early intervention program, resources available for payment for services and other related information.

Statutory Authority G.S. 143B-147.

.5903 OPERATIONS

(a) Provision Of Case Management. The case management process shall begin at the time the individual is accepted as a client and shall continue through the termination of the client/agency relationship.

(b) Case Management Activities:

(1) Case management activities shall include:
(A) comprehensive assessment of the client's treatment/habilitation needs or problem areas;
(B) the allocation of responsibilities for implementation and monitoring of the treatment/habilitation plan;
(C) establishment of separate and joint responsibilities among staff and service agencies involved in helping the individual;
(D) planning for need or problem resolution through the identification or development of an appropriate service network inclusive of all available resources;
(E) assessment or determination of outcomes; and
(F) when minors are served, informing families of the availability of advocacy services.

(2) When infants and toddlers are served, the following additional activities are included:
(A) developing transition plans in conjunction with the family related to entry into preschools which are the responsibility of the Department of Public Instruction or other involved public or private service providers;
(B) facilitating and participating in development, review and evaluation of individualized family service plans;
(C) coordinating with medical and health providers; and
(D) assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family services plan.

Statutory Authority G.S. 143B-147.

SECTION .6000 - INPATIENT HOSPITAL TREATMENT FOR INDIVIDUALS WHO HAVE MENTAL ILLNESS OR SUBSTANCE ABUSE DISORDERS

.6001 SCOPE

(a) Inpatient hospital treatment involves the provision of 24-hour treatment in an inpatient hospital setting. This facility is designed to provide treatment for individuals who have acute psychiatric problems or substance abuse disorders and is the most intensive and restrictive type of facility for individuals. Services may include:

(1) psychological and medical diagnostic procedures;
(2) observation;
(3) treatment modalities, including medication, psychotherapy, group therapy, occupational therapy, industrial therapy, vocational rehabilitation, and recreation therapy and milieu treatment;
(4) medical care and treatment as needed;
(5) supportive services including education; and
(6) room and board.

(b) Psychiatric facilities shall be designed to serve individuals who require inpatient care for the evaluation, treatment, and amelioration of those acute psychiatric symptoms which impair or interfere with the client's ability to function in the community. Because inpatient care is the most restrictive service in the system of care for psychiatric patients, the goal of inpatient hospitalization is to stabilize symptoms so that the client can return to the community as soon as possible. An individual who, in addition to mental illness, has other disorders, such as mental retardation or substance abuse, shall be eligible for admission if the primary need of treatment is for mental illness.

(c) Substance abuse facilities that provide detoxification services shall comply with the applicable rules for detoxification.

Statutory Authority G.S. 143B-147.

.6002 STAFF

(a) Each facility shall clearly delineate in writing the numbers and qualification of its personnel.

(b) Each facility shall have a designated medical director. In a substance abuse facility, the medical director must be a physician with at least two years experience in the treatment of substance abuse.

(c) A physician shall be present in the facility or on call 24 hours per day.

(d) A physician shall supervise the treatment of each client.

(e) Staff coverage in a psychiatric facility shall include at least one of each of the following:

(1) psychiatrist;
(2) licensed practicing psychologist;
(3) psychiatric social worker;
(4) psychiatric nurse; and
(5) the services of a qualified mental health professional readily available by telephone or page.

(f) Staff coverage in a substance abuse facility shall include at a minimum:

(1) one full-time certified alcoholism, drug abuse or substance abuse counselor for every ten or fewer clients. If the facility falls below this prescribed ratio and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment;
(2) at least one registered nurse on duty during each shift;
(3) at least two direct care staff members on duty at all times;
(4) one direct care staff member for each 20 or fewer clients on duty at all times in facilities serving adults;
(5) a minimum of one staff member for each five or fewer minor clients on duty during the hours 7:00 a.m. to 11:00 p.m.; and
(6) at least one staff member on duty trained in substance abuse withdrawal and symptoms of secondary complications to substance abuse.

Statutory Authority G.S. 143B-147.

.6003 OPERATIONS

Program Plan Description. Each facility shall specify:

(1) a daily schedule of therapeutic activities;
(2) a description of services offered for the family and significant others and how these individuals are involved in the treatment process; and
(3) a description of how the client and family members are linked in their home communities with support groups and referral sources; and
(4) a description of how the facility will facilitate the continuity of care between inpatient and outpatient services.

Statutory Authority G.S. 143B-147.

SECTION .6100 - EMERGENCY SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6101 SCOPE

Each area program shall make provisions for emergency services on a 24-hour non-scheduled basis to individuals of all ages and disability groups and their families, for immediate screening or assessment of presenting problems including emotional or behavioral problems or problems resulting from the abuse of alcohol or other drugs.

Statutory Authority G.S. 143B-147.

.6102 STAFF

(a) At least one staff member shall be designated to coordinate and supervise activities of the emergency services network.

(b) A qualified professional, as appropriate to the client's needs, shall be available for immediate consultation and for direct face-to-face contact with clients.

(c) Prior to providing emergency services, each staff member or volunteer shall be trained in:

(1) available resources;
(2) interviewing techniques;
(3) characteristics of substance abuse disorders, developmental disabilities, and mental illness;
(4) crisis intervention;
(5) making referrals; and
(6) commitment procedures.

(d) Volunteers shall be supervised by a qualified professional.

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

.6103 OPERATIONS

(a) Emergency services shall include at least the following:

(1) 24-hour access to personnel trained in emergency services;
(2) 24-hour telephone coverage at no cost to the client;
(3) provision for emergency hospital services; and
(4) provision of emergency back-up or consultation by a qualified mental health professional and a qualified alcoholism, drug abuse or substance abuse professional.

(b) The emergency telephone number shall be clearly identified in the local telephone directory and publicized in the community through such means as brochures, appointment cards and public service announcements.

(c) At least one designated staff member of the area program shall review emergency services records to assure that arrangements with treatment/habilitation staff are made for follow-up services.

Statutory Authority G.S. 143B-147.

SECTION .6200 - OUTPATIENT SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6201 SCOPE

Each area program shall make provision for outpatient services which are provided to individuals of all ages and disabilities, families, or groups in a non-hospital setting through short visits for the purpose of treatment, habilitation, or rehabilitation.

Statutory Authority G.S. 143B-147.

.6202 OPERATIONS

(a) Availability Of Services. The area program shall provide at least one clinic that holds office hours no less than 40 hours per week in order to make available outpatient services. Clinics which are located at other sites in the catchment area, and which operate less than 40 hours per week, shall inform clients of the availability of the full-time clinic when part-time clinics are not open.

(b) Scheduling Appointments. The service shall establish and implement written procedures for scheduling appointments and providing services for individuals without appointments.

Statutory Authority G.S. 143B-147.

SECTION .6300 - COMPANION RESPITE SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6301 SCOPE

Companion respite is a support service in which a trained respite provider is scheduled to care for the individual in a variety of settings, including the individual's own home or other location not subject to licensure.

Statutory Authority G.S. 143B-147.

.6302 STAFF

Each provider shall have a current medical statement on file with the area program.

Statutory Authority G.S. 143B-147.

.6303 OPERATIONS

(a) Responsibilities Of Governing Body. Each governing body shall:

(1) develop and implement written criteria for the approval of providers and the sites where services may be provided.

(2) attempt to match the client's needs with the provider's ability to provide respite services.

(3) make available to the provider instructions regarding duties and responsibilities which shall include, but need not be limited to:

(A) length of time for which service will be provided;

(B) administration of medications; and

(C) special dietary considerations.

(4) furnish written information to the provider, if the client is involved in a day program, regarding responsibilities for assuring that the client attends the program and for structuring activities to enhance objectives established by the developmental or occupational program.

(b) Agreement With Providers. Unless represented in a written job description for providers or in written policies and procedures, each governing body shall have a written agreement signed by each provider of respite care. A signed copy of the agreement shall be maintained by the governing body, and a signed copy shall be given to the provider. The provisions of the agreement shall specify the responsibilities of the governing body and the provider including:

(1) confidentiality requirements;

(2) procedures for securing emergency services;

(3) program activities to be implemented;

(4) responsibilities for supervising the respite client;

(5) procedures related to administration of medications;

(6) participation in respite training programs;

(7) terms of compensation;

(8) client rights; and

(9) adherence to agency policies and procedures.

Statutory Authority G.S. 143B-147.

SECTION .6400 - PERSONAL ASSISTANCE FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6401 SCOPE

(a) Personal assistance is a service which provides aid to a client who has mental illness, developmental disabilities or substance abuse disorders so that the client can engage in activities and interactions in which the client would otherwise be limited or from which the client would be excluded because of a disability or disabilities. The assistance includes:

(1) assistance in personal or regular living activities in the client's home;

(2) support in skill development; or

(3) support and accompaniment of the client in regular community activities or in specialized treatment, habilitation or rehabilitation service programs.

(b) If these Rules are in conflict with Medicaid rules or Medicare regarding Personal Care, and Medicaid or Medicare is to be billed, then the Medicaid or Medicare rules shall prevail.

Statutory Authority G.S. 143B-147.

.6402 STAFF

(a) Personal assistance shall be provided under the direction

of a supervisor who is a qualified professional.

(b) When a specific client's disability is different from that for which the supervisor is trained, the personal assistance employee shall have access to consultation from a qualified professional who is trained in a discipline related to the client's needs.

(c) Individuals who are employed to provide personal assistance shall have:

(1) at least a high-school diploma or its equivalent; and

(2) special training regarding the needs of the specific client for whom assistance will be provided.

(d) Individuals employed to provide personal assistance shall be specifically informed in each personal assistance arrangement regarding safety precautions and 24-hour emergency procedures.

Statutory Authority G.S. 143B-147.

.6403 OPERATIONS

Housing Review. When personal assistance for a client includes providing service in the client's home, one of the purposes of the service is to assess the safety and sanitation of the home with the client. If the safety or sanitation is in question, it shall be brought to the attention of the client and the professional responsible for the treatment/habilitation or case management of the client, so that the situation can be discussed as a part of the regular treatment/habilitation or case management planning process.

Statutory Authority G.S. 143B-147.

SECTION .6500 - EMPLOYEE ASSISTANCE PROGRAMS (EAP)

.6501 SCOPE

(a) An employee assistance program (EAP) is a worksite based program designed to assist in the identification and resolution of productivity problems in the workplace associated with employees impaired by personal concerns including, but not limited to, health, marital family, financial, alcohol, drug, legal, emotional, stress, or other personal concerns which may adversely affect employee job performance.

(b) The service is offered in partnership with employers with whom the area program has a written agreement and provides employee education, supervisory training, referral, follow-up and program evaluation.

Statutory Authority G.S. 143B-147.

.6502 STAFF

The area program shall designate an individual who has the responsibility for planning and implementing employee assistance programs with employers from both the public and private sector.

Statutory Authority G.S. 143B-147.

.6503 OPERATIONS

(a) Population Served. Each EAP shall be designed to serve the organization (employer), its employees, and their family members by providing a comprehensive system from which employees can obtain assistance addressing personal problems which may affect their work performance.

(b) Written Agreement. The EAP shall implement, within the constraints placed on it by the employer firm, a written agreement with community employers which incorporates the following:

(1) a written formal policy statement promulgated by the community employer which defines the intent of the program;

(2) identification of a program administrator by the community employer who will serve as liaison between the employer and the EAP;

(3) written procedures to be used by the community employer in implementing its EAP;

(4) written procedures to be used by the EAP to carry out the screening and referral process; and

(5) a statement assuring the community employer that the EAP shall comply with applicable confidentiality regulations.

(c) Training. The EAP shall establish and make available a training program to be used in promoting the utilization of the program.

(d) Awareness Program. The EAP shall implement an ongoing employee awareness program to inform employees of the availability of services.

Statutory Authority G.S. 143B-147.

SECTION .6600 - SPECIALIZED FOSTER CARE SERVICES

.6601 SCOPE

Specialized foster care is a support service provided cooperatively by the area program and the local department of social services or other licensed child care agency for individuals with developmental disability or mental illness who are in the custody of or whose parents have entered into a boarding home agreement with the local Department of Social Services or other licensed child care agency. Individuals up to 21 years of age may be served if they are involved in an ongoing educational program provided by the public school system or an adult day service provided by an adult developmental activity program or community college system. Support activities include funding, monitoring and evaluation, program coordination, parent training, development and implementation of individual treatment or goal plans, and consultation and technical assistance. These services shall be designed to serve those individuals in whose behalf area program funds are directed to foster parents in exchange for the provision of individualized prescriptive programming.

Statutory Authority G.S. 131D, Article 1A; 143B-147; 143B-153.

.6602 APPROVED FOSTER HOMES

Each foster home shall be licensed by the Department of Human Resources and supervised by the county Department of Social Services or other licensed child care agency and shall meet the criteria for receipt of Title XX (P.L. 97-35) foster care special services funds as specified in 10 NCAC 41F and J. The criteria are available for review at each county Department of Social Services office.

Statutory Authority G.S. 131D-10.3; 143B-147.

.6603 PLACEMENT CARE AGREEMENT

(a) The area program shall negotiate a placement care agreement with the specialized foster care parents on behalf of each individual for whom the area program contracts for specialized foster care services.

(b) The agreement shall include provisions related to the following:

(1) commitment by the foster parents to participate in needed treatment programs related to the foster placement;

(2) commitment from the foster parents to participate with area program staff in the development and implementation of individualized treatment or goal plans;

(3) commitment by the foster parents to receive consultation and technical assistance from the area program; and

(4) commitment by the foster parents that any decision to terminate services shall be negotiated among the foster parents, the area program and county Department of Social Services consistent with the termination clause of the agreement.

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

SECTION .6700 - FORENSIC SCREENING AND EVALUATION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.6701 SCOPE

Forensic services shall be designed to serve offenders and alleged offenders referred by the criminal justice system by court order.

Statutory Authority G.S. 143B-147.

.6702 OPERATIONS

(a) Forensic Screening And Evaluation. Forensic screening and evaluation to assess capacity to proceed to trial shall be provided by evaluators trained and registered in accordance with the provisions of 10 NCAC 18F .0115 through .0122; TRAINING AND REGISTRATION OF FORENSIC EVALUATORS (DMH/DD/SAS publication APSR 100-3).

(b) Consultation To Law Enforcement Officials. Consultation to law enforcement officials, including consultation prior to the commitment of an offender or alleged offender to any state psychiatric hospital, shall be provided.

(c) Justice Treatment Services:

(1) Each area program shall develop and implement a written justice treatment services plan which shall provide for the coordination of area program court related activities with the criminal justice system.

(2) An individual shall be designated who has responsibility for developing and implementing the justice treatment services plan.

Statutory Authority G.S. 15A-1002; 143B-147.

SECTION .6800 - PREVENTION SERVICES

.6801 SCOPE

Prevention services shall include information, consultation, education and instruction for the general population.

Statutory Authority G.S. 143B-147.

.6802 STAFF

The area program shall designate a director for prevention services.

Statutory Authority G.S. 143B-147.

SECTION .6900 - CONSULTATION AND EDUCATION SERVICES

.6901 SCOPE

(a) Consultation is a prevention or intervention service provided to other mental health, human service, and community planning and development organizations or individual practitioners of other organizations designed to both impart knowledge and assist recipients in developing insights and skills necessary to carry out their service responsibilities. The ultimate goal is to increase the quality of care available in the service delivery system.

(b) Education is a prevention or intervention service designed to impart knowledge to various target groups, including clients, families, schools, businesses, churches, industries, and civic and other community groups in the interest of increasing understanding of the nature of mental health, mental retardation, and substance abuse disorders, and the availability of various community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life situations.

Statutory Authority G.S. 143B-147.

.6902 STAFF

The consultation and education service shall have a designated director.

Statutory Authority G.S. 143B-147.

.6903 OPERATIONS

(a) Written Program Plan. Each area program shall develop annually a written plan for consultation and education services specifying populations that will be targeted and objectives to be obtained.

(b) Coordination of Services. The consultation and education service shall be coordinated with other components of the area program to insure continuity of care.

Statutory Authority G.S. 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18A - MONITORING PROCEDURES

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

.0124 SCOPE

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

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

.0125 DEFINITIONS

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

~~(1) "Area Authority" means the same as specified in G.S. 122C-3.~~

~~(2) "Area program" means the agency responsible for mental health, developmental disabilities, and substance abuse services, either directly or under contract, for the area authority in a designated catchment area.~~

~~(3) "Accreditation" means the designation given a service by the Division to indicate:~~

~~(a) compliance with all applicable General Statutes and Rules of the Commission and the Secretary; or~~

~~(b) evidence that action is being taken to correct an out of compliance finding.~~

~~(4) "Certificate" means the document issued by the Division for a service to indicate accreditation.~~

~~(5) "Commission" means the same as specified in G.S. 122C-3.~~

~~(6) "Division" means the same as specified in G.S. 122C-3.~~

~~(7) "Provider" means the person and agency responsible for the provision of a service.~~

~~(8) "Service" means the care, treatment, rehabilitation or habilitation which is provided by an area program. For the purpose of this document, the term "service" may refer to one or more sites where the service is provided or to a System of Services as approved by the Commission.~~

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

.0126 GENERAL PROVISIONS

~~(a) All area operated and contracted services of an area program shall be reviewed for compliance with the applicable General Statutes and Rules of the Commission and the Secretary. The accreditation review shall be conducted in accordance with the Rules in this Section. Following accreditation, a service shall continue to be reviewed, at a minimum, once during every triennial review cycle.~~

~~(b) A service shall:~~

~~(1) be authorized by the Division to receive start up Division funds; and~~

~~(2) following an on-site review, be accredited by the Division to continue to receive Division funds.~~

~~(c) The on-site accreditation review and written report for a service are the responsibility of the:~~

~~(1) Division for an area operated service; and~~

~~(2) area director for a contracted service.~~

~~The Division Director's designee shall make the determination of responsibility for review of a service when there is a question of responsibility.~~

~~(d) Accreditation shall be maintained through participation in a triennial survey as described in Rule .0130 of this Section.~~

~~(e) The Division shall be responsible for approval and issuance of the certificate for an area operated service.~~

~~(f) The area director and the Division shall be responsible for approval and issuance of the certificate for a contracted service.~~

~~(g) The Division shall notify the area director in writing when authorization for funds or the accreditation of a service is denied, or when revocation of accreditation is initiated. The written notification shall give the reason for such action and the right to appeal the decision according to Rule .0135 of this Section. The area director shall provide the same notification to the contracted provider or agency director when such action involves a contracted service.~~

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

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

~~(2) An area operated or contracted service may, with the approval of the area director, request an on-site review from the Division for the purpose of consultation and technical assistance with the understanding that Rule .0128 of this Section does not apply.~~

~~(3) An area director may request approval of a System of Services, in the format approved by the Commission.~~

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

.0127 ACCREDITATION

~~(a) The area program shall submit an application for accreditation of a service, as specified in this Rule, on the Division's "Application for Accreditation" form.~~

~~(b) The area program shall submit the application to the Division for a service at least 30 days prior to:~~

~~(1) provision of service to a client in a non-accredited service;~~

~~(2) change in provider for an existing service; or~~

~~(3) change of location or addition of sites. The Division shall determine if an on-site accreditation review is required based on the information provided on the application and current status of the accredited service.~~

~~(c) Authorization for the service to receive Division funds shall be granted upon a determination by the Division that sufficient data has been provided by the applicant and there is reasonable assumption that the applicant will be able to fully perform all obligations pursuant to accreditation.~~

~~(d) Authorization to receive Division funds shall not begin prior to the date of the area director's signature on the application.~~

~~(e) An on-site accreditation review of a service which has been, authorized to receive Division funds shall be completed within six months of the approved effective date, unless waived by the Division Director in accordance with Rule .0135 of this Section.~~

~~(f) The date of accreditation shall be the date of the on-site accreditation review.~~

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

.0128 OUT-OF-COMPLIANCE FINDING

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

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

~~(c) The time allowed for the corrective action to be taken shall not exceed six months except when waived by the Division Director in accordance with Rule .0135 of this Section.~~

~~(d) When an out of compliance issue is fully resolved with supporting documentation, a letter shall be sent from the Division to the area board chairman and the area director stating that the issue is resolved.~~

~~(e) If an out of compliance issue is not fully resolved and it is felt by the Division that there is not evidence that acceptable action is being taken to correct the out-of-compliance finding, a letter shall be sent from the Division to the area board chairman and area director stating that revocation of accreditation procedures will be initiated.~~

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

.0130 TRIENNIAL ACCREDITATION REVIEW

~~(a) An area program shall maintain accreditation of its services by participation in the triennial, on-site, accreditation review process as described in this Section.~~

~~(b) At least 60 days prior to the on-site review, the area director shall assure that:~~

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

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

~~(c) The area director shall be responsible for corrective action which addresses an out of compliance finding identified during the review as described in Rule .0128 of this Section.~~

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

.0132 DENIAL OR REVOCATION OF ACCREDITATION

~~(a) The denial or revocation of accreditation for a service shall be initiated:~~

~~(1) upon confirmation that a service subject to licensure is not licensed;~~

~~(2) when there is substantiated evidence of a condition which threatens the health, safety or welfare of an individual served;~~

~~(3) upon failure to complete corrective action in accordance with the approved plan; or~~

~~(4) upon failure to participate in the triennial survey.~~

~~(b) If the Division finds that a service meets one or more of the conditions specified in Paragraph (a) of this Rule and that the appropriate procedures have been followed by the Division, Division funds shall be withheld as outlined in accounting Rule 10 NCAC 14C .1013 until compliance is achieved as determined by the Division Director.~~

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

.0133 CHANGES IN STATUS

~~A "Change In Status" form, provided by the Division, shall be submitted immediately by the area director to the Division, when a change occurs in information for a service in the Inventory of Services, excluding those situations requiring an "Application for Accreditation", as specified in Rule .0127(b) of this Section.~~

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

.0135 APPEALS AND WAIVERS

~~(a) An area board may informally appeal to the Division Director regarding accreditation and the withholding of Division funds set forth in this Section. A formal appeal, final agency decision, and contested case hearing may be requested in accordance with procedures specified in 10 NCAC 14C .1013 and 10 NCAC 14B, Section .0300.~~

~~(b) Waiver of a rule in this Section may be granted in accordance with the procedures codified in 10 NCAC 14B .0500. The waiver decision shall be based on, but not be limited to:~~

~~(1) whether the health, safety or welfare of the client is threatened;~~

~~(2) the nature and extent of the request; and~~

~~(3) the past record of the service provider with compliance of rules.~~

~~The decision to deny a waiver request is a final agency decision for purposes of initiating a contested case hearing.~~

Statutory Authority G.S. 122C-26; 122C-27; 122C-112; 122C-191; 143B-147.

.0136 CONFIDENTIALITY OF REVIEW DATA

~~(a) All persons who participate in on-site reviews shall assure confidentiality in accordance with G.S. 122C-56(c), G.S. 122C-192 and 10 NCAC 18D .0124.~~

~~(b) Written review findings are a matter of public record and, as such, shall be available for public inspection after receipt by the area director and the area board chairperson.~~

Statutory Authority G.S. 122C-56(c); 122C-113; 122C-141(b); 122C-142(a); 122C-191(d); 122C-192.

SUBCHAPTER 18I - GENERAL REQUIREMENTS

SECTION .0100 - PURPOSE: SCOPE: APPLICABILITY AND DEFINITIONS

.0114 PURPOSE AND SCOPE

~~(a) Subchapters 18I through 18Q of this Chapter set forth minimum standards for area programs and contract agencies of area programs. All area programs and contract agencies of area programs shall comply with these standards as a condition for participation in federal-state financial aid.~~

~~(b) Each area program and its contract agencies are subject to review for compliance with the standards contained in Subchapters 18I - 18Q according to procedures specified in REVIEW PROCESS FOR AREA PROGRAMS AND THEIR CONTRACT AGENCIES (division publication APSM 40-1).~~

Statutory Authority G.S. 143B-147.

.0115 DEEMED STATUS

~~(a) If an inpatient psychiatric service or inpatient substance abuse treatment service operated by an area program is surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18L .0108, .0224, .0429, and .0431. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the Division.~~

~~(b) If an inpatient psychiatric service or inpatient substance abuse treatment service is provided on a contractual basis with an area program and is surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18K .0263; 18L .0108, .0224, and .0429. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the Division.~~

~~(c) If a residential service for persons with mental retardation or other developmental disabilities operated by an area program is certified as an Intermediate Care Facility for the Mentally Retarded (ICF/MR) by the North Carolina Division of Facility Services for the Health Care Financing Administration of the United States Department of Health and Human Services, the Commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18L .0108, 18L .0224, 18L .0429 and 18L .0431. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the Division.~~

~~(d) If a residential service for persons with mental retardation or other developmental disabilities is provided on a contractual basis and is certified as an Intermediate Care Facility for the Mentally Retarded (ICF/MR) by the North Carolina Division of Facility Services for the Health Care Financing Administration of the United States Department of Health and Human Services, the Commission deems the service to be in compliance with applicable rules codified in 10 NCAC 18I through 18Q with the exception of the following rules: 10 NCAC 18I .0114; 18J .0213; 18K .0263; 18L .0108, 18L .0224, 18L .0429, and 18L .0431. Any service certified under the provisions of the rules contained in 10 NCAC 18I through 18Q shall, however, continue to be subject to inspection by the Division.~~

~~(e) Deemed status may be provided only if the program shall agree to provide to the Division of Mental Health, Mental Retardation and Substance Abuse Services copies of the following documents:~~

~~(1) JCAHO statement of construction and fire protection (as submitted to JCAHO by the accredited program);~~

~~(2) JCAHO reports and recommendations;~~

~~(3) JCAHO focused survey reports;~~

~~(4) Accredited program progress reports which have been sent to the program by JCAHO;~~

~~and~~

~~(5) Permission to participate in any regular survey conducted by the JCAHO.~~

Statutory Authority G.S. 143B-147.

.0116 APPLICABILITY TO AREA PROGRAM MANAGEMENT

~~Each area program shall comply with the standards delineated in 10 NCAC 18J: Area Program Management Standards.~~

Statutory Authority G.S. 143B-147.

.0117 APPLICABILITY TO CONTRACT AGENCY MANAGEMENT

~~Each contract agency of the area program shall comply with the standards delineated in 10 NCAC 18K; Contract Agency Management Standards.~~

Statutory Authority G.S. 122C-141; 122C-142; 143B-147.

.0118 APPLICABILITY TO PROGRAM COMPONENT OPERATIONS

~~Each program component, whether area operated or contracted, shall comply with the applicable standards delineated in 10 NCAC 18L; Program Component Operational Standards; and with the applicable standards relating to program components delineated in 10 NCAC 18M, 18N, 18O, 18P and 18Q which govern the service provided by the program component.~~

Statutory Authority G.S. 122C-141; 122C-142; 143B-147.

.0119 REQUIRED SERVICES

~~Each area program shall provide or contract for the provision of each service delineated in 10 NCAC 18M; Required Services.~~

Statutory Authority G.S. 143B-147.

.0120 DEFINITIONS

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

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

~~(2) "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) "Alcohol Abuse" means the terms as defined in 10 NCAC 14K .0103.~~

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

~~(5) "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) "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 and codified in 10 NCAC 18W .0001 through .0004. 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) "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) "Assessment" means the term as defined in 10 NCAC 14K .0103.~~

~~(9) "Atypical development" means the term as defined in 10 NCAC 14K .0103.~~

~~(10) "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) "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) "Certified alcoholism counselor" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.~~

~~(13) "Certified Drug Abuse Counselor" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.~~

~~(14) "Certified Substance Abuse Counselor" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.~~

~~(15) "Child" means the term as defined in 10 NCAC 14K .0103.~~

~~(16) "Chronically Mentally Ill Adult" means the term as defined in 10 NCAC 14K .0103.~~

~~(17) "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) "Clinical Staff Member" means the term as defined in 10 NCAC 14K .0103.~~

~~(19) "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) "Contract Agency" means the term as defined in 10 NCAC 14K .0103.~~

~~(21) "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) "Day/night Service" means the term as defined in 10 NCAC 14K .0103.~~

~~(23) "Detoxification" means the term as defined in 10 NCAC 14K .0103.~~

~~(24) "Developmentally delayed children" means the term as defined in 10 NCAC 14K .0103.~~

~~(25) "Direct Care Staff" means the term as defined in 10 NCAC 14K .0103.~~

~~(26) "Disability Group" means either the mentally retarded, mentally ill, or substance abusers.~~

~~(27) "Disaster Relief Planning" means arranging for the provision of crisis counseling to survivors of major natural or man made catastrophies in accordance with the provisions of P.L. 93-288.~~

~~(28) "Dispensing Medication" means the term as defined in 10 NCAC 14K .0103.~~

~~(29) "Division" means the same as the term "DMH/DD/SAS" as defined in 10 NCAC 14K .0103.~~

~~(30) "Documentation" means the term as defined in 10 NCAC 14K .0103.~~

~~(31) "Drug Abuse" means the term as defined in 10 NCAC 14K .0103.~~

~~(32) "Drug Dependence" (addiction) means the term as defined in 10 NCAC 14K .0103.~~

~~(33) "Early Intervention Services" means the term as defined in 10 NCAC 14K .0103.~~

~~(34) "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) "First Aid" means the term as defined in 10 NCAC 14K .0103.~~

~~(36) "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) "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) "Governing Body" means the term as defined in 10 NCAC 14K .0103.~~

~~(39) "He/His/Him" means pronouns used throughout these standards for convenience and consistency for reference to both sexes.~~

~~(40) "Health Services" means the term as defined in 10 NCAC 14K .0103.~~

~~(41) "High risk children" means the term as defined in 10 NCAC 14K .0103.~~

~~(42) "Hours of Operation" means the term as defined in 10 NCAC 14K .0103.~~

~~(43) "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.~~

~~(44) "Infant" means the term as defined in 10 NCAC 14K .0103.~~

~~(45) "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) "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) "Legend Drug" means the term as defined in 10 NCAC 14K .0103.~~

~~(48) "Medication" means the term as defined in 10 NCAC 14K .0103.~~

~~(49) "Minor Client" means the term as defined in 10 NCAC 14K .0103.~~

~~(50) "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) "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) "Parent" means the term as defined in 10 NCAC 14K .0103.~~

~~(54) "Peer Review" means the formal assessment by professional staff of the quality and efficiency of services ordered or performed by other professional staff.~~

~~(55) "Periodic Service" means the term as defined in 10 NCAC 14K .0103.~~

~~(56) "Preschool age child" means the term as defined in 10 NCAC 14K .0103.~~

~~(57) "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) "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) "Program Evaluation" means the term as defined in 10 NCAC 14K .0103.~~

~~(60) "Psychiatric Nurse" means the term as defined in 10 NCAC 14K .0103.~~

~~(61) "Psychiatric Social Worker" means the term as defined in 10 NCAC 14K .0103.~~

~~(62) "Psychiatrist" means the term as defined in 10 NCAC 14K .0103.~~

~~(63) "Psychotherapy" means the term as defined in 10 NCAC 14K .0103.~~

~~(64) "Psychotropic Medication" means the term as defined in 10 NCAC 14K .0103.~~

~~(65) "Qualified Alcoholism Professional" means the term as defined in 10 NCAC 14K .0103.~~

~~(66) "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) "Qualified Drug Abuse Professional" means the term as defined in 10 NCAC 14K .0103.~~

~~(68) "Qualified Mental Health Professional" means the term as defined in 10 NCAC 14K .0103.~~

~~(69) "Qualified Mental Retardation Professional" means the same as the term "Qualified developmental disabilities professional" as defined in 10 NCAC 14K .0103.~~

~~(70) "Qualified Nutritionist" means the term as defined in 10 NCAC 14K .0103.~~

~~(71) "Qualified Substance Abuse Professional" means the term as defined in 10 NCAC 14K .0103.~~

~~(72) "Registered Dietitian" means the term as defined in 10 NCAC 14K .0103.~~

~~(73) "Rehabilitation" means the term as defined in 10 NCAC 14K .0103.~~

~~(74) "Research" means the term as defined in 10 NCAC 14K .0103.~~

~~(75) "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) "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) "Respite episode" means the term as defined in 10 NCAC 14K .0103.~~

~~(78) "Screening" means the term as defined in 10 NCAC 14K .0103.~~

~~(79) "Service" means the term as defined in 10 NCAC 14K .0103.~~

~~(80) "Severely Physically Disabled Person" means for the purpose of ADAP (Adult Developmental Activity Program) the term as defined in 10 NCAC 14K .0103.~~

~~(81) "Standard Client Record" means a written account of all services provided a client from the time of formal admission of the client by the area program or contract agency until discharge. This information is documented on standard forms which are filed in a standard order.~~

~~(82) "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) "State Facility" means a facility operated by the Division and which provides mental health, mental retardation or substance abuse~~

~~services.~~

~~(84) "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) "Substantially Mentally Retarded Person" means the term as defined in 10 NCAC 14K .0103.~~

~~(86) "Support Services" means the term as defined in 10 NCAC 14K .0103.~~

~~(87) "Telephone Counseling Service" means an organized and publicized service providing short-term supportive counseling, referral, crisis intervention and information.~~

~~(88) "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) "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) "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) "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 18J - AREA PROGRAM MANAGEMENT STANDARDS

SECTION .0100 - AREA BOARD ORGANIZATION/RESPONSIBILITIES

.0110 SCOPE

~~The area board is comprised of a group of individuals appointed by the county commissioners to serve as the governing body of the area authority. Primary responsibilities of the area board are to review and evaluate area needs and programs, to develop an annual plan and budget, and to establish policies for implementation of area program services.~~

Statutory Authority G.S. 122C-115; 122C-118; 122C-132; 122C-143; 143B-147.

.0111 AREA BOARD

~~Each area board shall be organized and shall carry out its functions in accordance with the provisions of Chapter 122C of the General Statutes of North Carolina.~~

Statutory Authority G.S. 122C-115; 122C-118; 122C-119; 143B-147.

.0112 AREA BOARD EDUCATION AND TRAINING

~~Each area program shall provide orientation and training for each member of the area board.~~

Statutory Authority G.S. 122C-115; 122C-118; 122C-119; 143B-147.

.0113 AREA BOARD OPERATION POLICIES

~~(a) The area board shall adopt policies governing the operation of the area program consistent with the General Statutes of North Carolina including Chapters 122C, 126, 143 and 159; with appropriate standards contained in 10 NCAC 18I through 18Q and with other regulations affecting area programs which are adopted by the Division director or commission.~~

~~(b) The area board shall adopt a policy, plan or procedure as required in 10 NCAC 18J .0700 Quality Assurance and 10 NCAC 18L Program Component Operational Standards.~~

Statutory Authority G.S. 122C-118; 122C-119; 143B-147.

.0114 ORGANIZATION OF POLICIES AND PROCEDURES

~~(a) Each area program shall maintain all policies and procedures duly adopted by the area board or management including those required of the area program as specified in the standards.~~

~~(b) The policies and procedures shall be maintained in an indexed, organized manner.~~

Statutory Authority G.S. 122C-118; 122C-119; 143B-147.

.0115 OPEN MEETINGS

~~Each area board shall comply with the North Carolina open meetings law, G.S. 143-318.9 through 143-318.18.~~

Statutory Authority G.S. 143B-147.

.0116 MINUTES OF AREA BOARD MEETINGS

~~Minutes of each official meeting of the area board shall be permanently maintained and shall include:~~

~~(1) date, time and place of meeting;~~

~~(2) members attending and absentees;~~

~~(3) decisions reached and actions taken including supporting documentation; and~~

~~(4) reports submitted by the area director or other program reports.~~

Statutory Authority G.S. 122C-118; 122C-119; 143B-147.

.0117 DISTRIBUTION OF STANDARDS

~~(a) Each area program shall distribute to each of its area operated and contract components a copy of applicable portions of the standards and shall also distribute all applicable revisions to the standards as they occur.~~

~~(b) Each area program shall distribute to each of its area operated and contract components a copy of applicable interpretations of standards and a copy of division regulations as these interpretations and regulations are issued by the Division.~~

Statutory Authority G.S. 143B-147.

.0118 EXCEPTIONS TO STANDARDS

~~(a) Each appeal to the Commission for an exception to a standard in behalf of the area program or its contract agency shall be made by the area board.~~

~~(b) Appeals for exceptions shall be made under the provisions of G.S. 122C-141 (Provision of Services) and 122C-145 (Appeal by area authorities) and according to the rules codified in 10 NCAC 14B .0300 CONTESTED CASES (division publication APSR-10-2), adopted in accordance with G.S. 150B-14(e).~~

Statutory Authority G.S. 122C-141; 122C-145; 143B-147.

.0119 APPEALS PROCEDURES FOR CONTRACT PROVIDERS

~~(a) Pursuant to G.S. 122C-151.3, an area authority shall establish written procedures for the resolution of disputes regarding decisions of an area authority with the following as specified in G.S. 122C-151.4(c):~~

~~(1) a contractor or a former contractor; or~~

~~(2) a client or a person.~~

~~(b) Decisions may be appealed to the Area Authority Appeals Panel as set forth in Section .0800 of this Subchapter.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

SECTION .0200 - FISCAL SERVICES

.0212 SCOPE

~~The area program's accurate receipt and disbursement of local, state and federal funds, in accordance with requirements for use of these funds, is essential to the planning and implementation of area program activities. The management of fiscal responsibilities, in accordance with generally accepted accounting principles, is inherent in an area program's operation. The standards in this Section apply to area programs only.~~

Statutory Authority G.S. 122C-144; 143B-147.

.0213 COMPLIANCE WITH DIVISION REGULATIONS

~~Each area program shall comply with all applicable portions of the D44; 143B-147; division's rules relating to fiscal management as codified in 10 NCAC 14C Sections .1000 and .1100 and 10 NCAC 14D .0006 and contained in Section 25 of the "Area Program Budgeting and Procedures Manual" (division publication APSM-75-1).~~

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

SECTION .0300 - REQUIRED AREA PROGRAM STAFF

.0304 SCOPE

~~Professional staff, who have completed the educational training for the responsibilities they assume, are the foundation of the provision of quality services for clients served by the area program. Quality programming is dependent, to a large extent, on the availability of key professionals sufficient to meet the needs of the client population. The standards in this Section delineate the minimum professional staff required for each area program.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0305 PSYCHIATRIST

~~Each area program shall employ or contract for the services of at least one psychiatrist.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0306 LICENSED PRACTICING PSYCHOLOGIST

~~Each area program shall employ or contract for the services of at least one licensed practicing psychologist.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0307 PSYCHIATRIC NURSE

~~Each area program shall employ or contract for the services of at least one psychiatric nurse.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0308 PSYCHIATRIC SOCIAL WORKER

~~Each area program shall employ or contract for the services of at least one psychiatric social worker.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0309 CERTIFIED ALCOHOLISM/DRUG ABUSE/SUBSTANCE ABUSE COUNSELORS

~~By January 1, 1985 each area program shall employ or contract for the services of at least one certified alcoholism counselor and at least one certified drug abuse counselor, or at least one certified substance abuse counselor.~~

Statutory Authority G.S. 122C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0310 QUALIFIED MENTAL RETARDATION PROFESSIONAL

~~Each area program shall employ or contract for the services of at least one qualified mental retardation professional.~~

Statutory Authority G.S. 122-C-3; 122C-117; 122C-121; 122C-154; 122C-155; 143B-147.

.0311 QUALIFIED CLIENT RECORD MANAGER

~~Each area program shall employ or contract for the services of at least one qualified client record manager.~~

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

SECTION .0600 - STATE FACILITY RELATIONSHIPS

.0601 SCOPE

~~The services provided by state facilities, including psychiatric hospitals, mental retardation centers, alcoholic rehabilitation centers and facilities for treatment and education of emotionally disturbed children, as well as those provided by area programs and their contract agencies, are an essential part of the continuum of services available for area program clients. Effective relationships among state facilities, area programs and their contract agencies promote continuity of service for an individual client preceding, during and following his admission to a state facility. The standards in this Section apply to area programs only.~~

Statutory Authority G.S. 143B-147.

.0602 SINGLE PORTAL OF ENTRY AND EXIT DESIGNATION

~~Each area authority desiring designation as a single portal area shall comply with the requirements of G.S. 122C-132.~~

Statutory Authority G.S. 122C-132; 143B-147.

.0603 WRITTEN AGREEMENTS WITH STATE FACILITIES

~~(a) Each area program shall negotiate a written agreement with each state psychiatric hospital, mental retardation center, and alcoholic rehabilitation center serving its geographic area except the North Carolina Special Care Center in Wilson.~~

~~(b) This agreement shall define specific roles and responsibilities of each party for the provision of services to the catchment area population.~~

Statutory Authority G.S. 122C-132; 122C-143; 143B-147.

.0604 RESIDENTIAL POPULATION: GROUP HOMES FOR MR/DD ADULTS

~~(a) Each area program shall assure that at least one half of the total resident population of all group homes for mentally retarded/developmentally disabled adults in its catchment area is comprised of individuals who immediately prior to their admission to a group home for mentally retarded/developmentally disabled adults were:~~

~~(1) residents of a state mental retardation center, a state psychiatric hospital, a group home for children who are mentally retarded/developmentally disabled, a specialized community residential center for children who are mentally retarded, a group home for individuals who are mentally retarded and behaviorally disordered, or a certified ICF/MR facility;~~

~~(2) continuity of care clients as defined in G.S. 122C-63; or~~

~~(3) clients who had been processed and approved for admission to a state facility.~~

~~(b) The area program may be exempt from the requirements in Paragraph (a) of this Rule if it is determined and approved in writing by the Division's Chief of Developmental Disabilities that there is not a sufficient number of clients within the catchment area who fall within the categories listed in Paragraph (a) of this Rule to enable the area program to comply with the requirements of this Rule.~~

~~(c) Each area program shall maintain a written record indicating which clients in its area operated or contract group homes for mentally retarded/developmentally disabled adults fall within the categories listed in Paragraph (a) of this Rule.~~

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

SECTION .0700 - QUALITY ASSURANCE

.0701 SCOPE

~~The standards in this Section apply to area programs with the exception of Standards .0708, .0709, .0710, .0711, and .0712 which apply to components of area programs.~~

Statutory Authority G.S. 122C-2; 122C-101; 122C-117; 122C-118; 122C-132; 122C-191; 143B-147.

.0702 QUALITY ASSURANCE PLAN

~~(a) Each area program shall establish and implement a written quality assurance plan which shall describe how quality assurance activities will be carried out in the area program and its contract agencies.~~

~~(b) Quality assurance activities deemed essential by the area program for contract agencies shall be addressed in the contract.~~

~~These activities shall be spelled out in the contract and may be accomplished either as an integral part of the area program plan or by the contract agency itself.~~

~~(c) The plan shall be reviewed annually by the area program and revised if necessary.~~

~~(d) The plan and any subsequent revision shall be approved and signed by the area board chairman.~~

Statutory Authority G.S. 143B-147.

.0703 QUALITY ASSURANCE COMMITTEE

~~(a) Each area program shall have a quality assurance committee.~~

~~(b) The purpose, scope and organization of the quality assurance committee shall be specified in the quality assurance plan.~~

Statutory Authority G.S. 143B-147.

.0704 COMPOSITION AND ACTIVITIES OF QUALITY ASSURANCE COMMITTEE

~~(a) The quality assurance committee shall be comprised of representation from each of the disability service areas, the client record manager, a representative of area administration and may include representatives of contract agencies. Committee members shall also include a nurse, a psychologist, a physician and a social worker.~~

~~(b) One of the quality assurance committee members who has direct treatment/habilitation responsibilities shall serve as the committee chairperson.~~

~~(c) A member of the quality assurance committee shall not review his own clients' treatment/habilitation records.~~

~~(d) Minutes of meetings shall be recorded and shall include date; time; attendees and absentees; and a summary of the business which was conducted. Minutes shall be reviewed by the area board and signed by the area board chairman.~~

Statutory Authority G.S. 143B-147.

.0705 CLIENT CARE EVALUATION STUDIES

~~The quality assurance committee shall ensure that at least two client care evaluation studies of issues relevant to the improvement of services to clients are completed during each fiscal year.~~

Statutory Authority G.S. 143B-147.

.0706 RECORD REVIEW

~~Each quality assurance committee shall establish, implement and document the criteria, procedure and methodology for client record reviews for completeness and adequacy as delineated in 10 NCAC 18L Section .0500; Client Records; and 10 NCAC 18L .0603 Service Purpose And Eligibility Requirements.~~

Statutory Authority G.S. 143B-147.

.0707 UTILIZATION AND PEER REVIEW

~~Each quality assurance committee shall establish, implement and document the criteria, procedure and methodology for utilization and peer review.~~

Statutory Authority G.S. 143B-147.

.0708 CLINICAL SUPERVISION OF MENTAL HEALTH STAFF

~~(a) Each component shall implement a written plan of clinical supervision for staff who are not qualified mental health professionals and who provide mental health clinical services.~~

~~(b) Each clinical staff member who is not a qualified mental health professional shall have an individual plan of clinical supervision.~~

~~(c) Each staff member who provides mental health clinical services and who is not a qualified mental health professional shall be supervised by a qualified mental health professional.~~

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

.0709 CROSS-REFERENCE TO CLINICAL SUPERVISION OF SUBSTANCE ABUSE STAFF

~~(a) For those services not subject to licensure under G.S. 122C, Article 2, clinical supervision of substance abuse staff shall be implemented according to the provisions of 10 NCAC 14K .0319 (b) (3), (4) and (5).~~

~~(b) For purposed of the rules of this Section, the term "facility" in 10 NCAC 14K .0319 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0710 PROFESSIONAL SUPERVISION OF MENTAL RETARDATION STAFF

~~Each staff member of a mental retardation component who is not a qualified mental retardation professional shall be supervised by, or have access to the professional supervision of, a qualified mental retardation professional.~~

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

.0711 PRIVILEGING OF ALL PROFESSIONAL STAFF

~~(a) Each component shall implement written policies and procedures by which the qualifications of each professional are examined and a determination made as to treatment/habilitation privileges granted and supervision needed.~~

~~(b) Delineation of privileges shall be based on documented verification of the individual's competence, training, experience and licensure.~~

~~(c) These policies and procedures shall be reviewed and approved by the area program's quality assurance committee.~~

~~(d) In addition to (a), (b) and (c) of this Rule, professionals~~

~~providing habilitation and family support services to infants and toddlers with or at risk for developmental delays or atypical development and their families 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(e).~~

Authority G.S. 122C-117; 122C-155; 143B-147; 20 U.S.C. 1471.

.0712 CROSS-REFERENCE TO EMPLOYEE EDUCATION AND TRAINING

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0307.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0307 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0713 PROGRAM EVALUATION ACTIVITIES

~~(a) Each area program shall implement program evaluation activities.~~

~~(b) These activities shall reflect the evaluation of program quality, effectiveness and efficiency in such areas as:~~

~~(1) the impact of the area program in reducing inappropriate institutionalization;~~

~~(2) effectiveness of consultation and education services;~~

~~(3) impact of services upon the residents of the service area;~~

~~(4) availability, awareness, acceptability and accessibility of services;~~

~~(5) patterns of use of service; and~~

~~(6) cost of area program operation.~~

Statutory Authority G.S. 143B-147.

.0714 QUALITY ASSURANCE ANNUAL REPORT

~~Each area director shall submit a written annual report to the area board summarizing the activities and recommendations of the quality assurance committee and other related committees regarding the quality of services provided by the area program and its contract agencies. This report shall include at a minimum the following functional areas:~~

~~(1) client care evaluation studies;~~

~~(2) record reviews;~~

~~(3) utilization and peer reviews;~~

~~(4) clinical supervision;~~

~~(5) privileging of professional staff;~~

~~(6) employee education and training activities; and~~

~~(7) the results of program evaluation.~~

Statutory Authority G.S. 143B-147.

.0715 CORRECTIVE ACTION

~~Each area program shall ensure that corrective action is taken to address problems found through the quality assurance process.~~

Statutory Authority G.S. 143B-147.

SECTION .0800 - ESTABLISHMENT OF AN AREA AUTHORITY APPEALS PANEL

.0801 PURPOSE, SCOPE AND DEFINITIONS

~~(a) The purpose of the rules in this Section is to specify the procedures for appeals to the area authority as set forth in G.S. 122C-151.4.~~

~~(b) These Rules apply to any client, contractor, former contractor, or person as defined in G.S. 122C-151.4.~~

~~(c) The terms used in this Section shall have the same meanings as provided in G.S. 122C-151.4.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0802 AREA AUTHORITY APPEALS PANEL

~~(a) Pursuant to G.S. 122C-151.4(b), the Area Authority Appeals Panel, hereafter referred to as "the Panel," shall consists of three members.~~

~~(b) Under authority delegated by the Secretary, the members shall:~~

~~(1) be appointed by the Division Director and serve at the pleasure of the Secretary; and~~

~~(2) have education and experience relevant to the appeals process, as determined by the Division Director.~~

~~(c) The Division Director shall appoint the Chair of the Panel.~~

~~(d) Clerical support for the Panel shall be provided by the Division.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0803 APPEALS PROCEDURES

~~(a) Appeals of the decision of local area authorities shall be forwarded, along with all supplementary documentation considered during the local area appeals process, to the Division Director within 14 days of the local decision being rendered.~~

~~(b) The Division Director shall forward all information to the Chair of the Panel within five working days.~~

~~(c) The Panel shall complete an administrative review and notify the appealing party and the area program of its decision, in writing, within 14 days of receipt of the appeal. Unless further appealed within 14 days of the date of this decision, this decision shall be considered final.~~

~~(d) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final, by submitting a written request to the Chair of the Panel, within 14 days of the date of the administra-~~

~~tive review decision.~~

~~(e) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chair.~~

~~(f) The hearing shall be scheduled at a time and place designated by the Chair.~~

~~(g) The appealing party and the area program shall be notified of the time and place of the hearing no less than 14 days prior to the hearing.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0804 HEARING PROCEDURES

~~(a) The Chair of the Panel:~~

~~(1) will convene the meeting at the prearranged time and place;~~

~~(2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;~~

~~(3) may limit the total number of persons presenting for the appellant and appellee; and~~

~~(4) may impose time limits for presentations.~~

~~(b) The official representative of the appellant and appellee shall:~~

~~(1) specify by name and position all individuals who will be present for the hearing;~~

~~(2) provide the Panel with any requested information; and~~

~~(3) if appropriate, ensure that a representative of the appellant and appellee will be available at the hearing to make a presentation.~~

~~(c) Any member of the Panel may address questions to the representatives of the appellant or of the appellee.~~

~~(d) All persons present at the appeal will address only the Chair or a specific member of the Panel who has addressed a specific question to that individual.~~

~~(e) Direct exchanges between presenters for the appellant and the appellee shall be prohibited.~~

~~(f) The Panel may obtain any form of technical assistance or consultation relevant to the appeal.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0805 PANEL DECISIONS

~~(a) The Panel shall vote in open session on each specific item being appealed.~~

~~(b) Within five working days, each decision shall be conveyed in writing to the appealing party and the area authority.~~

~~(c) Any decision may be rescheduled for a subsequent meeting if the Panel determines that it lacks sufficient information to render a decision at the initial hearing.~~

~~(d) In all cases a final decision shall be rendered within 30 days of the written request for a hearing.~~

Statutory Authority G.S. 122C-112(a); 122C-151.4.

SUBCHAPTER 18K - CONTRACT AGENCY MANAGEMENT STANDARDS

SECTION .0100 - GOVERNING BODY ORGANIZATION

.0109 INTRODUCTION

~~Each contract agency of an area program is responsible to a governing body that by law, charter, articles of incorporation, partnership agreement or other legally recognized manner has full legal authority and responsibility for its overall operation. Primary responsibilities of the governing body of the contract agency are to establish policies for implementation of the contract agency's services and to adopt an operating budget for the agency. The standards in this Section apply to contract agencies only.~~

Statutory Authority G.S. 55-3; 55A-3; 115C-36; 143B-147.

.0110 OPERATING AUTHORITY

~~The governing body of a contract agency shall have evidence of its legal authority to operate the service for which the area program is contracting.~~

Statutory Authority G.S. 55-7; 55A-7; 115C-40 115C-47; 143B-147

.0111 COMPLIANCE WITH QUALITY ASSURANCE STANDARDS

~~Each contract agency shall comply with 10 NCAC 18J .0708, .0709, .0710, .0711 and .0712.~~

Statutory Authority G.S. 143B-147.

.0112 MINUTES OF GOVERNING BODY MEETINGS

~~Minutes of each official meeting of the governing body shall be permanently maintained and shall include the following:~~

~~(1) date, time and place of meeting;~~

~~(2) members attending and absentees;~~

~~(3) decisions reached and actions taken including supporting documentation;~~

~~(4) reports submitted by members of the governing body; and~~

~~(5) reports submitted by the executive director or other program reports.~~

Statutory Authority G.S. 55-37; 55A-27; 115C-3; 143B-147.

.0113 CONTRACT AGENCY OPERATION POLICY

~~The governing body of a contract agency shall adopt a policy, plan or procedure as required in 10 NCAC 18J .0708, .0709, .0710, .0711 and .0712 in accordance with the provisions of 10 NCAC 18I .0115, 10 NCAC 18J .0702(b) and as required in 10 NCAC 18L Program Component Operational Standards.~~

Statutory Authority G.S. 143B-147.

.0114 PERSONNEL POLICIES AND

PROCEDURES

~~The governing body of a contract agency shall establish written personnel policies and procedures which shall include at least the adoption of job descriptions for personnel, salary schedule and an organizational chart.~~

Statutory Authority G.S. 143B-147.

.0115 ORGANIZATION OF POLICIES AND PROCEDURES

~~(a) Each contract agency shall maintain all policies and procedures duly adopted by the contract agency and its governing body including those required by the contract agency as specified in the standards.~~

~~(b) The policies and procedures shall be maintained in an indexed, organized manner.~~

Statutory Authority G.S. 143B-147.

.0116 OPERATING BUDGET

~~The governing body shall adopt an annual operating budget for each program component for which it contracts with the area program.~~

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS

SECTION .0100 - LICENSURE

.0107 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies subject to licensure.~~

Statutory Authority G.S. 122C-23; 143B-147.

.0108 LICENSURE OF AREA OPERATED/ CONTRACT AGENCY FACILITIES

~~Each facility subject to licensure shall be licensed by the appropriate state agency.~~

Statutory Authority G.S. 122C-23; 143B-147.

SECTION .0200 - STATISTICAL RECORDS

.0223 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies unless otherwise specified in individual standards in this Section.~~

Statutory Authority G.S. 143B-147.

.0224 DATA REQUIREMENTS FOR AREA OPERATED/CONTRACT AGENCIES

~~Each area program and its contract agencies shall provide to the Division statistical data for each component in the required format specified by the Division.~~

Statutory Authority G.S. 143B-147.

SECTION .0300 - FACILITIES MANAGEMENT

.0331 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies.~~

Statutory Authority G.S. 122C-23; 143B-147.

.0332 COMPLIANCE WITH APPLICABLE CODES

~~Each component shall maintain documented evidence of the component's compliance with applicable fire, sanitation and building codes including an annual fire inspection.~~

Statutory Authority G.S. 122C-23; 143B-147.

.0333 CROSS-REFERENCE TO INDOOR LIVING SPACE

~~Each residential and respite facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0408.~~

Statutory Authority G.S. 143B-147.

.0334 CROSS-REFERENCE TO OUTDOOR ACTIVITY SPACE/EQUIPMENT

~~Each facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0326.~~

Statutory Authority G.S. 143B-147.

.0335 MAINTENANCE OF FACILITY

~~Each facility shall be clean and well maintained.~~

Statutory Authority G.S. 143B-147.

.0336 FURNISHINGS OF FACILITY

~~Furnishings, equipment and materials for indoor activity and reception areas and outdoor activity areas shall be selected in accordance with the ages, interests, skills and disabilities of the client served.~~

Statutory Authority G.S. 143B-147.

.0338 CROSS-REFERENCE TO PHYSICAL EXAMS/MEDICAL PROCEDURES

~~Components not subject to licensure under G.S. 122C, Article 2 performing physical examinations or medical procedures shall comply with the provisions of 10 NCAC 14K .0340.~~

Statutory Authority G.S. 143B-147.

.0339 SPACE FOR CLIENTS WHO ARE ILL

OR INJURED

~~Space shall be designated for use by clients who become ill or who are injured.~~

Statutory Authority G.S. 143B-147.

SECTION .0400 - CLIENT RIGHTS

.0428 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies.~~

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

.0429 CROSS-REFERENCE TO COMPLIANCE WITH STATUTES

~~In addition to G.S. 122C, each component not subject to licensure under G.S. 122C, Article 2 shall implement its services in such a manner as to ensure the rights accorded all clients as required by the following:~~

~~(1) G.S. 131D, Article 3 (Domiciliary Home Residents' Bill of Rights);~~

~~(2) G.S. 108A, Article 6 (Protection of the Abused, Neglected or Exploited Disabled Adult Act);~~

~~(3) G.S. 7A, Article 44 (Screening of Abuse and Neglect for Juveniles); and~~

~~(4) G.S. 130A, Article 6 (Communicable Diseases and Conditions).~~

Statutory Authority G.S. 7A, Article 44; 108A, Article 6; 122C, Article 3; 130A, Article 6; 131D, Article 3; 143B-147.

.0430 NON-DISCRIMINATION POLICY FOR CLIENTS

~~Each component shall comply with the requirements specified in Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.~~

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

.0431 CONFIDENTIALITY

~~Each component shall comply with the confidentiality regulations codified in 10 NCAC 18D (division publication APSM 45-1).~~

Statutory Authority G.S. 122C-52; 122C-54; 122C-55; 122C-141; 122C-142; 143B-147.

.0432 CROSS-REFERENCE TO CLIENT GRIEVANCE POLICY

~~The governing body of each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0328.~~

Statutory Authority G.S. 143B-147.

.0433 PROTECTION OF CLIENT RIGHTS

~~(a) Each area program shall develop and implement policy to assure the protection of client rights for clients served by the area program as specified in CLIENT RIGHTS IN COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 95-2, and codified in 10 NCAC 14P through 14S.~~

~~(b) As required by G.S. 122C-142, each area program is responsible for assuring that any contract agency develops and implements policy 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) The area board shall retain ultimate responsibility for the assurance of client rights.~~

~~(b) Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop 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) rules of conduct for meetings and voting procedures to be followed;~~

~~(5) procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;~~

~~(6) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and~~

~~(7) other operating procedures.~~

~~(c) The area board established Client Rights Committee shall oversee, for area operated services, 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 and CONFIDENTIALITY RULES, APSM 45-1, adopted in accordance with G.S. 150B-14(e); and~~

~~(3) establishment of a review procedure for any of the following which may be brought by a client, client advocate, parent, legally responsible person, 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.~~

~~(d) If the area board requires a contract agency to establish a Client Rights Committee, the Committee shall carry out the provisions of this Rule for the contract agency.~~

~~(e) Each Client Rights Committee shall be composed of a majority of non-area board members, with a reasonable effort made to have all disabilities equally represented. Staff who serve on the committee shall not be voting members.~~

~~(f) 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, or written or oral reports.~~

~~(g) An area program which contracts for services shall delineate in the service contract the authority of the area board Client Rights Committee and its relationship to the contract agency. The area board Client Rights Committee may review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action.~~

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

SECTION .0500 - CLIENT RECORDS

.0504 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies unless otherwise specified in individual standards in this Section.~~

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

.0511 DIAGNOSTIC CODING

~~(a) Each area program and its contract agencies shall code diagnoses for clients in each component using the following diagnostic systems:~~

~~(1) Mental illness, mental retardation or substance abuse shall be diagnosed according to the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (DSM III R). This publication is available from the American Psychiatric Press Inc., Suite 1101, 1400 K Street, N.W., Washington, DC 20005-2492, at a cost of twenty nine dollars and ninety five cents ($29.95 - soft cover) or thirty nine dollars and ninety five cents ($39.95 - hard cover).~~

~~(2) Physical disorders shall be diagnosed according to International Classification of Diseases, 9th Revision, Clinical Modification (ICD 9 CM). Volumes 1 and 2 of this publication are available from ICD 9 CM Third Edition Volumes 1 and 2, P.O. Box 360121, Pittsburgh, PA 15250-6121, at a cost of forty three dollars ($43.00 - soft cover). ICD 9 CM Volume 3 is available from AMRA, P.O. Box 97349, Chicago, IL 60690, at a cost of twenty three dollars ($23.00).~~

~~(b) Each area program and its contract agencies shall report diagnostic data to the Division as specified in the "Statistical Reporting Requirements to the Client Information Branch for Area Program and Contract Agency Components" (division publication APSM 70-1).~~

Statutory Authority G.S. 143B-147.

.0513 CLIENT RECORD RETENTION

~~Each area program and its contract agencies shall comply with the requirements set forth in the "Records Retention and Disposition Schedule" developed by the North Carolina Division of Archives and History, Department of Cultural Resources in conjunction with the Division (division publication APSM 10-3), adopted in accordance with G.S. 150B-14(c).~~

Statutory Authority G.S. 121; 132; 143B-147.

SECTION .0700 - TREATMENT/HABILITATION PROCESS

.0701 SCOPE

~~The standards in this Section apply to each service of the area program and its contract agencies.~~

Statutory Authority G.S. 143B-147.

.0702 CROSS-REFERENCE TO ADMISSION AND DISCHARGE

~~(a) Each 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 "service".~~

Statutory Authority G.S. 143B-147.

.0703 CROSS-REFERENCE TO ASSESSMENT

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0314.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0314 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0704 EVALUATION/DIAGNOSIS

~~(a) Each component shall specify in writing any routine diagnostic tests, assessments and evaluations or medical~~

~~examinations, as well as timeframes for their completion, which shall be completed for each client.~~

~~(b) Client diagnoses shall be established using DSM-III-R or ICD-9-CM as required in 10 NCAC 18L .0511.~~

Statutory Authority G.S. 143B-147;

.0705 CROSS-REFERENCE TO INDIVIDUAL TREATMENT/PROGRAM PLAN

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 which provides active treatment/habilitation shall comply with the provisions of 10 NCAC 14K .0315.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0315 shall be interpreted to mean "program component".~~

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

.0707 CROSS-REFERENCE TO SERVICE COORDINATION

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0318.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0318 shall be interpreted to mean "program component".~~

Statutory Authority G.S. 143B-147.

SECTION .0800 - HEALTH PRACTICES

.0801 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies.~~

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

.0803 REPORTING COMMUNICABLE DISEASES

~~Each component shall be responsible for reporting to the local health department cases of suspected reportable communicable diseases as required by G.S. 130A, Article 6 (Communicable Diseases and Conditions).~~

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

.0804 CROSS-REFERENCE TO MEDICAL EMERGENCIES

~~The governing body of each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0335.~~

Statutory Authority G.S. 143B-147.

.0805 CROSS-REFERENCE TO EMERGENCY INFORMATION

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0336.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0336 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0806 CROSS-REFERENCE TO EMERGENCY CARE PERMISSION

~~(a) Each service 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 "service".~~

Statutory Authority G.S. 143B-147.

.0807 CROSS-REFERENCE TO STAFF TRAINING FOR MEDICAL EMERGENCIES

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0338.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0338 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0808 CROSS-REFERENCE TO RESPONSIBILITY FOR WATER SAFETY

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 which includes water activities in its schedule shall comply with the provisions of 10 NCAC 14K .0343.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0343 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.0809 CROSS-REFERENCE TO FIRST AID SUPPLIES

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0341.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0341 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

SECTION .0900 - CLINICAL SERVICES

.0901 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies that incorporates clinical services in its activities.~~

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

.0902 COUNSELING/PSYCHOTHERAPY SERVICES

~~Individual, group and family counseling and psychotherapy shall be provided by, or under the direct supervision of, qualified professionals who have received training in these treatment/habilitation modalities.~~

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

.0903 CROSS REFERENCE TO SPECIALIZED THERAPIES

~~Specialized therapies provided by programs not subject to licensure under G.S. 122C, Article 2 shall be implemented according to the provisions of 10 NCAC 14K .0344.~~

Statutory Authority G.S. 143B-147.

.0904 CROSS-REFERENCE TO TESTING SERVICES

~~Testing services provided by programs not subject to licensure under G.S. 122C, Article 2 shall be implemented according to the provisions of 10 NCAC 14K .0345.~~

Statutory Authority G.S. 143B-147.

SECTION .1000 - MEDICAL SERVICES

.1001 SCOPE

~~Medical services include evaluating medication needs, prescribing of medications, the ordering of laboratory tests to assist in the diagnosis and monitoring of problems associated with the mental health, mental retardation and substance abuse disorder of clients, and proper referral to other medical specialists when indicated. The standards in this Section apply to each component of the area program and its contract agencies that provides medical services.~~

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

.1002 CROSS-REFERENCE TO PHYSICIAN RESPONSIBLE/MEDICAL SERVICES

~~Each component not subject to licensure under G.S. 122C, Article 2 providing medical services shall comply with the provisions of 10 NCAC 14K .0339.~~

Statutory Authority G.S. 90-18; 143B-147.

.1003 CLIENT EVALUATION BY A PHYSICIAN

~~Each client shall be evaluated by a physician prior to the provision of medical services associated with mental health, mental retardation and substance abuse needs of clients.~~

Statutory Authority G.S. 90-18; 122C-3; 122C-51; 122C-112; 122C-116; 122C-117; 122C-121; 122C-132; 122C-154; 122C-155; 143B-147.

.1004 CROSS-REFERENCE TO LABORATORY POLICIES AND PROCEDURES

~~(a) The governing body of each component not subject to licensure under G.S. 122C, Article 2 which orders laboratory tests shall comply with the provisions of 10 NCAC 14K .0346.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0346 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.1005 CROSS-REFERENCE TO LABORATORY ACCREDITATION

~~Each component not subject to licensure under G.S. 122C, Article 2 which orders laboratory tests shall comply with the provisions of 10 NCAC 14K .0347.~~

Statutory Authority G.S. 143B-147.

.1006 CROSS-REFERENCE TO DOCUMENTATION OF LABORATORY TESTS

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0348.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0348 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

SECTION .1100 - MEDICATION SERVICES

.1101 SCOPE

~~Medication services include the prescribing, dispensing, administration, storage and control of medication and the provision of education to those clients who are placed on medication by staff of the area program or its contract agencies. The standards in this Section apply to each component of the area program and its contract agencies.~~

Statutory Authority G.S. 122C-3; 122C-51; 122C-57; 122C-61; 122C-112; 122C-116; 122C-117; 122C-121; 122C-132; 122C-154; 122C-155; 122C-206; 143B-147.

.1102 CROSS-REFERENCE TO PRESCRIBING OF MEDICATION

~~(a) When medication is prescribed or administered in a service not subject to licensure under G.S. 122C, Article 2~~

~~compliance with the provisions of 10 NCAC 14K .0351 shall be met.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0351 shall be interpreted to mean "service".~~

Statutory Authority G.S. 143B-147.

.1103 CROSS-REFERENCE TO DISPENSING OF MEDICATION

~~Individuals dispensing medication in programs not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0350.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-68; 90-85.2; 143B-147.

.1105 CROSS-REFERENCE TO STORAGE OF MEDICATION

~~In programs not subject to licensure under G.S. 122C, Article 2, all medication shall be stored according to the provisions of 10 NCAC 14K .0352.~~

Statutory Authority G.S. 143B-147.

.1106 CROSS-REFERENCE TO DISPOSAL OF MEDICATION

~~(a) In programs not subject to licensure under G.S. 122C, Article 2, medication shall be disposed of according to the provisions of 10 NCAC 14K .0353.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0353 shall be interpreted to mean "program".~~

Authority G.S. 143B-147; 21 C.F.R. 1307.21.

.1107 CROSS-REFERENCE TO MEDICATION EDUCATION

~~Programs not subject to licensure under G.S. 122C, Article 2 providing medication for clients shall provide medication education according to the provisions of 10 NCAC 14K .0354.~~

Statutory Authority G.S. 143B-147.

SECTION .1200 - NUTRITION/DIETARY PRACTICES

.1201 SCOPE

~~Nutrition services are supportive services which recognize and provide for the physiological, emotional and cultural needs of clients through nutrition education and the provision of food. Nutrition services promote development of dietary practices which result in optimum nutritional status for health, well-being, growth and development of the individual. The standards in this Section apply to each component of the area program and its contract agencies unless otherwise specified in individual standards in this Section.~~

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

.1203 CROSS-REFERENCE TO NUTRITION REQUIREMENTS

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving meals for clients shall comply with the nutrition requirements delineated in 10 NCAC 14K .0356.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0356 shall be interpreted to mean "program component".~~

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

.1204 CROSS-REFERENCE TO MODIFIED DIETS

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving meals for clients shall comply with the requirements for modified diets delineated in 10 NCAC 14K .0357.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0357 shall be interpreted to mean "program component".~~

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

.1205 CROSS-REFERENCE T0 STAFFING FOR FOOD SERVICE

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving more than one meal daily shall comply with the requirements for staffing for food service and maintenance delineated in 10 NCAC 14K .0358.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0358 shall be interpreted to mean "program component".~~

Statutory Authority G.S. 143B-147.

.1206 CROSS-REFERENCE TO FOOD SERVICE EQUIPMENT AND SPACE

~~(a) Each program component not subject to licensure under G.S. 122C, Article 2 serving more than one meal daily shall comply with the requirements for food service equipment and space delineated in 10 NCAC 14K .0359.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0359 shall be interpreted to mean "program component".~~

Statutory Authority G.S. 143B-147.

SECTION .1300 - TRANSPORTATION SERVICES

.1301 SCOPE

~~Transportation services are a supportive means of assisting clients in their receipt of needed services. When transportation services for clients are provided, the program assumes responsi-~~

~~bility for client safety. The standards in this Section apply to transportation services provided for clients by components of the area program and its contract agencies.~~

Statutory Authority G.S. 143B-147.

.1302 CROSS-REFERENCE TO TRANSPORTATION POLICY

~~(a) The governing body of each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for clients shall comply with the requirements regarding transportation policy delineated in 10 NCAC 14K .0361.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0361 shall be interpreted to mean "component".~~

Statutory Authority G.S. 143B-147.

.1303 CROSS-REFERENCE TO LICENSED DRIVER

~~Each driver in the transportation service in program components not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0362.~~

Statutory Authority G.S. 143B-147.

.1304 CROSS-REFERENCE TO SAFETY PRECAUTIONS

~~Each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for clients shall comply with the requirements for seat belts and secure storage delineated in 10 NCAC 14K .0363.~~

Statutory Authority G.S. 143B-147.

.1305 CROSS-REFERENCE TO TRANSPORTATION OF MINORS

~~Each component not subject to licensure under G.S. 122C, Article 2 providing transportation services for minor clients shall comply with the provisions of 10 NCAC 14K .0364.~~

Statutory Authority G.S. 143B-147.

.1306 EMERGENCY INFORMATION

~~Emergency information for each client shall be available and easily accessible to the vehicle operator. This information shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the client's preferred physician.~~

Statutory Authority G.S. 143B-147.

.1307 TRANSPORTATION ROUTES

~~Transportation routes shall be designed so that each client who is regularly scheduled to receive services three or more days per week shall not be transported more than one hour one way unless justification for longer driving time is documented.~~

Statutory Authority G.S. 143B-147.

.1308 LABELING OF VEHICLES

~~Labeling of vehicles used for transportation of clients shall not indicate that disability group are being transported.~~

Statutory Authority G.S. 143B-147.

.1309 CONTRACTED TRANSPORTATION SERVICES

~~When a component contracts for transportation services, the provisions of the contract shall incorporate compliance with the standards contained in this Section.~~

Statutory Authority G.S. 143B-147.

SECTION .1400 - RESEARCH PRACTICES

.1401 SCOPE

~~(a) The standards in this Section apply to research which:~~

~~(1) is not standard or conventional;~~

~~(2) 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;~~

~~(3) utilizes elements or steps not ordinarily employed by qualified professionals treating similar disorders of this population; or~~

~~(4) is a type of procedure that serves the purpose of the research only and does not include treatment designed primarily to benefit the individual.~~

~~(b) The standards in this Section apply to each component of the area program and its contract agencies which involve area program clients in research activities.~~

Statutory Authority G.S. 122C-52; 122C-54; 122C-55; 122C-56; 143B-147.

.1402 CROSS-REFERENCE TO RESEARCH REVIEW BOARD

~~(a) Each component not subject to licensure under G.S. 122C, Article 2 which involves area program clients in research activities shall comply with the requirements relating to research review boards delineated in 10 NCAC 14K .0333.~~

~~(b) For purposes of the rules of this Section, the term "facility" in 10 NCAC 14K .0333 shall be interpreted to mean "component".~~

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

.1403 CROSS-REFERENCE TO SUBJECT PARTICIPATION

~~Each component not subject to licensure under G.S. 122C, Article 2 which involves area program clients in research activities shall comply with the requirements for subject~~

~~participation delineated in 10 NCAC 14K .0334.~~

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

SECTION .1500 - EARLY INTERVENTION SERVICES PROCEDURE SAFEGUARDS

.1501 SCOPE

~~This Section applies to those early intervention services that are available through the area programs and contract agencies.~~

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

.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(e).~~

~~(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(e).~~

~~(c) As used in this Section, an eligible child is an infant or toddler who meets the definition of "high risk children," "developmentally delayed children," or children with "atypical development" as defined in 10 NCAC 14K .0103, or "developmentally disabled" children as defined in G.S. 122C-3.~~

Authority G.S 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et.seq.

.1503 OPPORTUNITY TO EXAMINE RECORDS

~~Area programs and contract agencies shall comply with Section 303.402 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the right of the parents of an eligible child to examine records. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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

.1504 PRIOR NOTICE; NATIVE LANGUAGE

~~Area programs and contract agencies shall comply with Section 303.403 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the requirement of prior notice to parents of an eligible child in the parents' native language. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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

.1505 PARENT CONSENT

~~Area programs and contract agencies shall comply with Section 303.404 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the requirement of parental consent. The period of reasonable time referenced in 303.403(a) shall be construed to be no less than two weeks. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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

.1506 SURROGATE PARENTS

~~Area programs and contract agencies shall comply with Section 303.405 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to surrogate parents. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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(e).~~

~~(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; 20 U.S.C. Sections 1401 et. seq., 1471 et.seq.

.1508 ADMINISTRATIVE COMPLAINT RESOLUTION/MEDIATION

~~Parents of an eligible child shall have the right to a timely administrative resolution of any complaints concerning an area program's or contract agency's proposal or refusal to initiate or change the identification, evaluation or placement of the child, or concerning the provision of appropriate early intervention services to the child and the child's family. The parents of an eligible child shall also have the right to mediation of such complaints. The procedures for resolution and mediation of complaints shall be set forth in this Section.~~

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

.1509 ADVISING PARENTS OF AVAILABILITY OF COMPLAINT RESOLUTION

~~Whenever an area program or contract agency becomes aware~~

~~that the parents of an eligible child disagree with any decision regarding early intervention services for their child, the area program or contract agency, whichever is appropriate, shall immediately advise the parents regarding the availability of and procedure for requesting complaint resolution under this Section.~~

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

.1510 WRITTEN REQUEST FOR COMPLAINT RESOLUTION

~~A request by parents of an eligible child for administrative resolution or mediation of a complaint shall be in writing and sent to the Director of the area program in which the eligible child is receiving services.~~

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

.1511 CONTENT OF REQUEST FOR COMPLAINT RESOLUTION

~~A request by parents of an eligible child for administrative resolution or mediation of a complaint shall contain the following:~~

~~(1) name and address of the child;~~

~~(2) name and address of the parent;~~

~~(3) name and address of the area program or contract agency against whom the complaint is made;~~

~~(4) a statement of facts describing in sufficient detail the nature of the complaint;~~

~~(5) the signature of the complaining parent and the date of signing; and~~

~~(6) whether the parent desires mediation prior to the administrative resolution of his complaint.~~

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

.1512 MEDIATION

~~(a) Parents of an eligible child may request mediation to resolve a complaint as an intervening step prior to the administrative proceeding. If mediation is requested, the mediation shall take place prior to the administrative proceeding.~~

~~(b) An impartial person shall be:~~

~~(1) appointed by the area director to serve as a mediator;~~

~~(2) selected from a list of mediators approved by the Chief of the Developmental Disabilities Section of the Division; and~~

~~(3) subject to qualifications of an impartial person as specified in Section 303.421 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations and incorporated by reference. This incorporation by reference shall include any subsequent amendment and editions of the referenced material.~~

~~(c) The Division shall provide a training program for the mediators.~~

~~(d) Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediative, administrative proceeding and written decision must be completed within the 30 day timeline set forth in Rule .1517 of this Section.~~

Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et.seq.

.1513 SCHEDULING ADMINISTRATIVE PROCEEDINGS

~~Upon receipt of written request for administrative complaint resolution pursuant to Rule .1511 of this Section, the Director of the area program in which the eligible child is receiving services shall schedule an administrative proceeding in accordance with the requirements of this Section. The parents shall be notified in writing of the date, time and location of the proceeding no later than seven calendar days prior to the hearing by the area director. The hearings must be scheduled at a time and place that is reasonably convenient to the parents.~~

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

.1514 APPOINTMENT AND QUALIFICATIONS OF IMPARTIAL PERSON

~~An impartial person shall be appointed by the area director to serve as a hearing officer for implementation of the administrative complaint resolution process. Compliance with Section 303.421 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the qualifications of an impartial person is required. This adoption by reference is in accordance with G.S. 150B-14(c). The impartial person must be selected from a list of hearing officers approved by the Deputy Director of the Developmental Disabilities Section of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall provide a training program for the impartial hearing officers.~~

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

.1515 AUTHORITY AND RESPONSIBILITIES OF IMPARTIAL PERSON

~~(a) The hearing officer shall have the powers listed in G.S. 150B-33, and in addition shall have the following authority:~~

~~(1) to establish reasonable time limitations on the parties' presentations;~~

~~(2) to disallow irrelevant, immaterial or repetitive evidence;~~

~~(3) to direct that additional evaluations of the child be performed;~~

~~(4) to make findings of fact and conclusions of law relevant to the issues involved in the hearing;~~

~~(5) to issue subpoenas for the attendance of witnesses~~

~~or the production of documents; and~~

~~(6) to specify the type and scope of the early intervention services to be offered the child, where the proposed services are found to be inappropriate.~~

~~This adoption by reference of G.S. 150B-33 shall be in accordance with G.S. 150B-14(e).~~

~~(b) The hearing officer does not have the authority to:~~

~~(1) determine that only a specific program, specific early intervention staff person or specific service provider is appropriate for the pupil; or~~

~~(2) determine noncompliance of state law and regulations.~~

~~(c) The decision of the hearing officer shall be in writing and shall contain findings of fact, conclusions of law and the reasons for the decision. The hearing officer shall mail a copy of the decision to each party by certified mail, return receipt requested.~~

~~(d) The hearing officer shall inform the parent that the parent may obtain a transcript of the hearing at no cost.~~

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

.1516 PARENT RIGHTS IN ADMINISTRATIVE PROCEEDINGS

~~Parents of an eligible child shall have the rights set forth in Section 303.422 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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

.1517 TIMELINES

~~The administrative proceeding shall be completed, and a written decision mailed to each of the parties within 30 days after the receipt of a parent's complaint as described in Rule .1510 of this Section.~~

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

.1518 CIVIL ACTION

~~Section 303.424 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the availability of a civil action for any party aggrieved by the findings and decision in an administrative proceeding is adopted by reference in accordance with G.S. 150B-14(e).~~

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

.1519 STATUS OF CHILD DURING PROCEEDINGS

~~Section 303.425 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the status of a child during an administrative proceeding is adopted by reference in accordance with G.S. 150B-14(e).~~

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

.1520 CONFIDENTIALITY

~~Personally identifiable information concerning an eligible child or family member of an eligible child is confidential and may not be disclosed or acquired except as provided by Rule .1521, .1522, and .1524 of this Section.~~

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

.1521 DISCLOSURE OF CONFIDENTIAL INFORMATION TO EMPLOYEES

~~An area program or contract agency may disclose confidential information to its employees who have a legitimate need for access to the information.~~

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

.1522 WRITTEN CONSENT REQUIRED

~~Except as provided in Rule .1510 of this Section, all disclosures of confidential information, including disclosures between an area program and contract agency, may be made only with the written consent of the parents. Client information may be disclosed between agencies participating in the provision of early intervention services in accordance with G.S. 122C-53(a), 122C-55(c), 122C-55(f), or 122C-55(h), as appropriate. However, the extent of information disclosed shall be limited to that information which is necessary to carry out the purpose of the disclosure. Parents shall be informed of their right to refuse to consent to the release of confidential information.~~

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

.1523 CONTENT OF WRITTEN CONSENT

~~(a) When consent for release of information is obtained by an area program or contract agency covered by the rules in this Subchapter, a consent for release form containing the information in this Subparagraph shall be utilized. The consent form shall contain the following information:~~

~~(1) child's name;~~

~~(2) name of party releasing the information;~~

~~(3) name of individual or agency to whom information is being released;~~

~~(4) information to be released;~~

~~(5) purpose for the release;~~

~~(6) length of time consent is valid;~~

~~(7) a statement that the consent is subject to revocation at any time;~~

~~(8) signature of parent;~~

~~(9) signature of individual witnessing the consent; and~~

~~(10) date the consent is signed.~~

~~(b) The release shall be effective only until the initial Individual Family Service Plan is developed, or, if an Individual Family Service Plan has been developed, until the next Individual Service Plan review.~~

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

.1524 RELEASE TO PUBLIC SCHOOLS

~~With the consent of the parents, confidential information may be provided to the public schools if and when the child is enrolled in a program under Part B of the Education of the Handicapped Act. If the parents refuse to consent, confidential information shall not be released to the public schools.~~

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

.1525 CONSENT TO RECEIVE SERVICES

~~The parents of a child, eligible to receive early intervention services, may determine whether they, their child, or other family members will accept or decline any type of early intervention service without jeopardizing the right to receive other early intervention services.~~

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

SUBCHAPTER 18M - REQUIRED SERVICES

SECTION .0100 - OUTPATIENT SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.0107 SCOPE

~~Services are provided to individuals, families, or groups in a non hospital setting through short visits to the area program or its contract agencies for the purpose of treatment, habilitation, or rehabilitation.~~

Statutory Authority G.S. 143B-147.

.0108 POPULATION SERVED

~~Outpatient services shall be available to all ages and disability groups and their families.~~

Statutory Authority G.S. 143B-147.

.0109 AVAILABILITY OF SERVICES

~~The area program shall provide at least one clinic that holds office hours no less than 40 hours per week in order to make available outpatient services. Clinics which are located at other sites in the catchment area, and which operate less than 40 hours per week, shall inform clients of the availability of the full time clinic when part time clinics are not open.~~

Statutory Authority G.S. 143B-147.

.0110 SCHEDULING OF APPOINTMENTS

~~The service shall establish and implement written procedures for scheduling of appointments and provision of services for individuals without appointments.~~

Statutory Authority G.S. 143B-147.

SECTION .0200 - EMERGENCY SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.0206 SCOPE

~~Emergency service is provided on a 24 hour non scheduled basis to individuals for immediate screening or assessment of presenting problems including emotional or behavioral problems or problems resulting from the abuse of alcohol or other drugs.~~

Statutory Authority G.S. 143B-147.

.0207 POPULATION SERVED

~~Emergency services shall be available to all ages and disability groups and their families.~~

Statutory Authority G.S. 143B-147.

.0208 HOURS OF OPERATION

~~Emergency services shall be provided 24 hours per day, seven days per week, 12 months per year.~~

Statutory Authority G.S. 143B-147.

.0209 STAFFING

~~(a) At least one staff member shall be designated to coordinate and supervise activities of the emergency services network.~~

~~(b) At least one qualified mental health professional shall be available for immediate consultation and for direct face to face contact with clients.~~

~~(c) A qualified alcoholism, drug abuse or substance abuse professional shall be available to the emergency services network.~~

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

.0210 TRAINING OF STAFF AND VOLUNTEERS

~~(a) Prior to providing emergency services, each staff member or volunteer shall be trained in the following:~~

~~(1) available resources;~~

~~(2) interviewing techniques;~~

~~(3) characteristics of substance abuse, mental retardation and mental illness;~~

~~(4) crisis intervention;~~

~~(5) making referrals; and~~

~~(6) commitment procedures.~~

~~(b) Volunteers shall be supervised by a qualified mental health~~

~~or substance abuse professional.~~

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

.0211 PROVISION OF SERVICES

~~Emergency services shall include at least the following:~~

~~(1) 24 hour access to personnel trained in emergency services;~~

~~(2) 24 hour telephone coverage at no cost to the client;~~

~~(3) provision for emergency hospital services; and~~

~~(4) provision of emergency back up or consultation by a qualified mental health professional and a qualified alcoholism, drug abuse or substance abuse professional.~~

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

.0212 EMERGENCY TELEPHONE NUMBER

~~The emergency telephone number shall be clearly identified in the local telephone directory and publicized in the community through such means as brochures, appointment cards and public service announcements.~~

Statutory Authority G.S. 143B-147.

.0213 REVIEW AND FOLLOW-UP OF EMERGENCY SERVICES PROVIDED

~~At least one designated staff member of the area program shall review emergency services records to assure that arrangements with treatment/habilitation staff are made for follow-up services.~~

Statutory Authority G.S. 143B-147.

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

.0304 SCOPE

~~(a) Consultation is a prevention or intervention service provided to other mental health, human service, and community planning and development organizations or individual practitioners of other organizations designed to both impart knowledge and assist recipients in developing insights and skills necessary to carry out their service responsibilities. The ultimate goal is to increase the quality of care available in the service delivery system.~~

~~(b) Education is a prevention or intervention service which is designed to impart knowledge to various target groups, including clients, families, schools, businesses, churches, industries, and civic and other community groups in the interest of increasing understanding of the nature of mental health, mental retardation, and substance abuse disorders, and the availability of various community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life situations.~~

Statutory Authority G.S. 143B-147.

.0305 REQUIRED STAFF

~~The consultation and education service shall have a designated director.~~

Statutory Authority G.S. 143B-147.

.0306 WRITTEN PROGRAM PLAN

~~Each area program shall develop annually a written plan for consultation and education services specifying populations that will be targeted and objectives to be obtained.~~

Statutory Authority G.S. 143B-147.

.0307 COORDINATION OF SERVICES

~~The consultation and education service shall be coordinated with other components of the area program to insure continuity of care.~~

Statutory Authority G.S. 143B-147.

SECTION .0400 - CASE MANAGEMENT FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.0406 SCOPE

~~(a) Case management is a support service through which planning and coordination of services are carried out in behalf of the individual. Case management is designed to integrate multiple services needed or being received by the individual from other agencies with those services being received through the area program. It may include advocacy on behalf of the individual and monitoring the provision of services to the individual. Within this context, case management assists an individual in meeting his total needs by establishing referral to evaluation, treatment, educational, vocational, residential, health, financial, social, and any other needed services.~~

~~(b) The extent to which case management services are provided will vary according to the needs of the client.~~

~~(c) The provision of case management is the responsibility of the area program which may elect to provide case management through a variety of models such as:~~

~~(1) primary therapist;~~

~~(2) contract with a private agency;~~

~~(3) disability specific case managers; and~~

~~(4) area operated case management units.~~

Statutory Authority G.S. 143B-147.

.0407 PROVISION OF CASE MANAGEMENT

~~The case management process shall begin at the time the~~

~~individual is accepted as a client and shall continue through the termination of the client/agency relationship.~~

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

.0408 CASE MANAGEMENT ACTIVITIES

~~(a) Case management activities shall include:~~

~~(1) comprehensive assessment of the client's treatment/habilitation needs or problem areas;~~

~~(2) the allocation of responsibilities for implementation and monitoring of the treatment/habilitation plan;~~

~~(3) establishment of separate and joint responsibilities among staff and service agencies involved in helping the individual;~~

~~(4) planning for need or problem resolution through the identification or development of an appropriate service network inclusive of all available resources; and~~

~~(5) the evaluation of outcomes.~~

~~(b) When infants and toddlers are served, the following additional activities are included:~~

~~(1) developing transition plans in conjunction with the family related to entry into preschool which are the responsibility of the Department of Public Instruction or other involved public or private service providers;~~

~~(2) facilitating and participating in the development, review and evaluation of individualized family service plans;~~

~~(3) informing families of the availability of advocacy services;~~

~~(4) coordinating with medical and health providers; and~~

~~(5) assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family services plan.~~

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

.0409 STAFF QUALIFICATIONS

~~When infants, toddlers and preschoolers are served, the case manager shall have demonstrated knowledge and understanding about:~~

~~(1) infants and toddlers with or at risk for developmental delays or atypical development;~~

~~(2) Part H of PL 99-457, the federal regulations related to it and relevant state statutes and standards;~~

~~(3) effective and appropriate help-giving behaviors; and~~

~~(4) the nature and scope of the services available under the state's early intervention program, resources available for payment for services and other related information.~~

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

SECTION .0500 - PROVISION OF INPATIENT PSYCHIATRIC SERVICES FOR CHILDREN: ADOLESCENT: ADULT AND ELDERLY INDIVIDUALS WHO ARE ACUTELY MENTALLY ILL

.0505 SCOPE

~~Inpatient psychiatric services are designed to provide intensive treatment, supportive care and close supervision in a controlled environment on a 24-hour per day basis for mentally ill children, adolescents, adults and elderly persons of the catchment area.~~

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

.0506 PROVISION OF SERVICES

~~(a) Each area program shall provide inpatient psychiatric services by one or more of the following:~~

~~(1) a psychiatric inpatient facility operated by the area program and licensed according to the provisions of 10 NCAC 14L .0100 (Inpatient Psychiatric Services for Individuals Who are Mentally Ill);~~

~~(2) a written agreement between the area program and a general hospital or private psychiatric hospital according to the provisions of 10 NCAC 18P Section .0900 (Contracted Inpatient Psychiatric Services for Children, Adolescent, Adult, and Elderly Individuals Who Are Mentally Ill); or~~

~~(3) a written agreement between the area program and a state psychiatric hospital according to the provisions of 10 NCAC 18P Section .1000 (Contracted State Hospital Psychiatric Inpatient Services for Children, Adolescent, Adult and Elderly Individuals Who Are Mentally Ill).~~

~~(b) Each area program shall make provision for the accessibility of inpatient psychiatric services for both voluntary and involuntary patients.~~

~~(c) Services to involuntary patients shall be provided in accordance with the area program's plan for use of community and area facilities, as approved by the Division.~~

Statutory Authority G.S. 143B-147.

SECTION .0600 - PROVISION OF PSYCHOSOCIAL REHABILITATION PROGRAMS FOR INDIVIDUALS WHO ARE CHRONICALLY MENTALLY ILL OR PROVISION OF PARTIAL HOSPITALIZATION SERVICES FOR INDIVIDUALS WHO ARE ACUTELY MENTALLY ILL

.0607 SCOPE

~~(a) A psychosocial rehabilitation program is a day program which is designed to provide a network of services primarily for chronically mentally ill individuals. The network is organized around and delivered through membership in a peer support group. The goal of the program is to help members to meet their needs and develop their abilities for independent community living.~~

~~(b) Partial hospitalization services are day programs which have as their purpose the prevention of psychiatric hospitalization for individuals who are acutely mentally ill by providing intensive alternative treatment, in a therapeutic milieu setting, for a substantial part of the day.~~

~~(c) The provision of both services is desired in order to meet the needs of the mentally ill.~~

Statutory Authority G.S. 143B-147.

.0608 PROVISION OF SERVICES

~~Each area program shall provide at least:~~

~~(1) a psychosocial rehabilitative program primarily for chronically mentally ill individuals licensed according to the provision of 10 NCAC 14L .0400 (Psychosocial Rehabilitative Programs for Individuals Who Are Chronically Mentally Ill); or~~

~~(2) a partial hospitalization program for acutely mentally ill individuals licensed according to the provisions of 10 NCAC 14L .0300 (Partial Hospitalization for Individuals Who Are Acutely Mentally Ill).~~

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

.0701 SCOPE

~~A developmental day service is a day/night service which provides individual habilitative programming for pre school children with developmental disabilities or delays or at high risk for mental retardation, developmental disabilities or delays or atypical development in specialized licensed child care centers. It is designed to meet developmental needs of the children such as self help, physical, language and speech, and cognitive and psychosocial skills in order to facilitate their functioning in a less restrictive environment, as well as to meet child care needs of families. It also offers family training and support and case management.~~

Statutory Authority G.S. 143B-147.

.0703 HOURS OF OPERATION

~~Developmental day services for preschool children shall be available for a minimum of eight hours per day (exclusive of transportation time), five days per week, 12 months per year.~~

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

.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 in accordance with the requirements of P.L. 99-457. This adoption by reference is in accordance with G.S. 150B-14(e).~~

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

Statutory Authority G.S. 143B-147.

.0705 DIRECTOR

~~(a) Each developmental day center shall have a designated director.~~

~~(b) The Director shall hold a bachelor level degree with specialization in administration, education, social work, nursing, psychology or a related field or have comparable experience and education.~~

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

.0706 AGE OF STAFF

~~Each staff member except student trainees and supervised volunteers shall be at least 18 years of age and the Director shall be at least 21 years of age.~~

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

.0708 DAILY TRAINING ACTIVITIES

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

~~(b) Activities shall be planned around the following principles:~~

~~(1) Group and individual activities, related to individual goal plans, shall be scheduled daily.~~

~~(2) Both free play and organized recreational activities shall be provided. No more than one third of the daily schedule shall be designated for both of these activities combined.~~

~~(3) Field trips and community experiences shall be coordinated with the goal plans for individual children.~~

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

.0709 GROUPING OF CHILDREN

~~Grouping of children shall allow for attending to the individual needs of each child. The following principles shall be observed when grouping children:~~

~~(1) the younger the children, the smaller the group;~~

~~(2) the more delayed the children, the smaller the group;~~

~~(3) the greater the number of physically handicapped children, the smaller the group; and~~

~~(4) the wider the chronological age range, the smaller the group.~~

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

.0710 FAMILY SERVICES

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

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

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

.0711 INTERDISCIPLINARY SERVICES

~~The professional services of a social worker, psychologist, language and communications therapist, physical therapist and physician shall be utilized by the program in accordance with the needs of the population served.~~

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

.0712 MEDICAL STATEMENT

~~Each staff member, student intern, regular volunteer, substitute staff member or other individual who works directly and on a continuous basis with children shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician. The medical statement may be in any written form but shall be signed by the physician and indicate the general good physical and mental health of the individual and the lack of evidence of active tuberculosis and communicable diseases. The program shall keep the most recent medical statement on file.~~

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

.0713 CLASSROOM AND ACTIVITY SPACE

~~(a) A ratio of 50 square feet per child shall be available for indoor classroom and activity space, exclusive of space occupied by sinks, lockers, storage cabinets, and other fixed equipment.~~

~~(b) Space shall be available for small groups and individualized training:~~

~~(1) Special interest areas shall be provided to enhance the development of individual children.~~

~~(2) Space for indoor physical activities shall be available for the provision of those activities enhancing gross motor development.~~

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

.0714 OUTDOOR ACTIVITY SPACE

~~Outdoor activity space shall be available in the ratio of 200 square feet per child scheduled to use the area at any one time.~~

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

.0801 SCOPE

~~(a) An adult developmental activity program (ADAP) is a day/night service which provides organized developmental activities for adults with substantial mental retardation, severe physical disabilities or other substantial developmental disabilities to prepare the individual to live and work as independently as possible. The activities and services of an ADAP are designed to adhere to the principles of normalization and community integration aimed at increasing age appropriate actions, images, and appearance of the individual.~~

~~(b) An ADAP offers a diverse variety of specific services and activities. These include vocational evaluation, vocational training, remunerative employment, personal and community living skill development, adult basic education and long term support, follow-up and case management. Support services to clients' families and consultation with the clients' employers and other involved agencies may also be provided. The amount of time devoted to these areas varies considerably depending upon the needs of the clients served.~~

~~(c) Support services to families and consultation with other involved agencies is also included.~~

~~(d) The rules contained in this Section are applicable to three specific models of ADAP services as follows:~~

~~(1) ADAP - Facility Based. The majority of the ADAP activities in this model, whether vocational or developmental in nature, are carried out on the premises of a site specifically designed for this purpose.~~

~~(2) ADAP - Supported Employment. The only ADAP services provided by the operator are those related to supported employment. All of the training activities in this model occur in the setting at the location where the client actually works or lives, not in a specialized facility maintained by the operator.~~

~~(3) ADAP - Supported Employment - Long Term Support. Clients served in this model have successfully completed the intensive initial training phase of supported employment which is sponsored by and the responsibility of the Division for Vocational~~

~~Rehabilitation Services. They are receiving those long-term support services which are targeted towards maintenance in the job and residential setting and independent functioning in the community. These are services which are the responsibility of the Division. Examples of such long-term support services include "refresher" vocational training to ensure that existing job skills are not lost, training in new job performance expectations, community living skill training, and consultation to other employees, employers, and families, and residential program staff.~~

~~(e) A single facility may operate more than one of these models. Rules .0817, .0818, .0819, .0824 through .0835 are applicable to all three models. The remaining rules are applicable to the individual model as indicated in the rule catchlines. Whatever the model provided, it is the ADAP service that is subject to certification, not the location of the business or organization where the client is placed for work.~~

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

.0802 COMPLIANCE REVIEW

~~(a) An ADAP that is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) in the Activity Service track or an ADAP which also incorporates work activity training in its program and which is accredited by CARF in the Activity Service and Work Adjustment or Work Service tracks shall be reviewed for compliance with 10 NCAC 18K (Contract Agency Management Standards) and 10 NCAC 18L (Program Component Operational Standards) according to the provisions of this Section as follows:~~

~~(1) Each ADAP which is operated by the area program shall comply with 10 NCAC 18L .0434; .0703; .0705; .0806; and .1307, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1;~~

~~(2) Each ADAP which is under contract with an area program:~~

~~(A) shall comply with:~~

~~(i) 10 NCAC 18D .0124, contained in Division publication, Confidentiality Rules, APSM 45-1; and 10 NCAC 18I .0120; 18K .0111; 18L .0434; .0703; .0705; .0806; and .1307, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1;~~

~~(ii) 10 NCAC 18L .0224 and .0511, if these are not addressed in the contract with the area program;~~

~~(B) shall maintain client record documentation; and~~

~~(C) may, at the discretion of the area program, be deemed in compliance with the rules in this Section.~~

~~(3) Each ADAP, whether operated by the area program, or under contract with an area program, shall be reviewed for compliance with Rule .0817 in this Section.~~

~~(b) The ADAP shall submit to the funding agency a copy of its most recent CARF Facilities Survey Report, and, if applicable, the Plan of Compliance and subsequent notice of CARF's acceptance of the correction made in accordance with the plan.~~

Statutory Authority G.S. 143B-147.

.0803 POPULATION SERVED

~~Each ADAP shall be designed primarily to serve individuals who are 16 years of age or older.~~

Statutory Authority G.S. 143B-147.

.0817 CLIENT ELIGIBILITY

~~Clients served shall be eligible for ADAP grant-in-aid regardless of financial resources with the exception of a client whose work earnings exceed one-half the federal statutory minimum wage over a consecutive 90-day period. With prior approval of the appropriate area director or designee, clients who are participating in a supported employment program authorized by the Division may have earnings in excess of one-half the minimum wage. Eligibility for clients in non-supported employment settings whose earnings have exceeded over one-half the minimum wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation, or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services. The eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional (QDDP) as referenced in 10 NCAC 18M .0800. Requests for the extension shall be based on a joint case review involving a representative of the involved ADAP, the local VR unit and the area program. The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for addressing these deficits. The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.~~

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

.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 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 which 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 developmental disabilities professional of the area program shall:~~

~~(A) obtain a recommendation from the vocational rehabilitation counselor for placement in the ADAP; and~~

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

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

.0819 CLIENT HANDBOOK

~~(a) Each ADAP shall have a client handbook including, but not limited to, information about services and activities.~~

~~(b) The client handbook shall be written in a manner comprehensible to clients and reflective of adult status.~~

~~(c) Each client shall be given a handbook and the handbook shall be reviewed with the client.~~

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

.0824 ANNUAL ADAP ASSESSMENT

~~Each ADAP shall conduct an annual internal assessment of the program's compliance with the standards and shall develop a written plan of action that addresses each identified deficiency.~~

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

.0825 PHYSICAL PLANT REQUIREMENTS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0604.~~

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

.0826 PROGRAM DIRECTOR

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0606.~~

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

.0827 CLIENT EVALUATOR

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0608.~~

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

.0828 ACTIVITIES AND SERVICES

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0609.~~

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

.0829 SAFETY EDUCATIONAL PROGRAM

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0610.~~

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

.0830 SAFETY COMMITTEE

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0611.~~

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

.0831 BUSINESS PRACTICES

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0612.~~

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

.0832 ACCIDENT REPORTING

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0613.~~

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

.0833 PROMOTION OF CLIENTS' RIGHTS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0614.~~

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

.0834 USE OF PUBLIC TRANSPORTATION BY CLIENTS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0615.~~

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

.0835 SUSPENSIONS AND DISMISSALS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0616.~~

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

.0836 FACILITY BASED ADAP: HOURS OF OPERATION

~~Each ADAP facility not subject to licensure under G.S. 122C,~~

~~Article 2 shall comply with the provisions of 10 NCAC 14M .0618.~~

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

.0837 FACILITY BASED ADAP: CLIENT/ STAFF RATIOS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0619.~~

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

.0838 SUPPORTED EMPLOYMENT/LONG TERM SUPPORT: CLIENT/STAFF RATIOS

~~Each ADAP facility not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0620.~~

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

SECTION .0900 - ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS)

.0901 SCOPE

~~An alcohol and drug education traffic school (ADETS) is a prevention and intervention service which provides an educational program primarily for first offenders convicted of driving while impaired as provided in G.S. 20-179(m).~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0902 POLULATION SERVED

~~While each school shall be designed primarily to serve first offenders convicted of driving while impaired, provisions shall be made for family members and other non students to attend classes if the instructor determines that their presence will not disrupt the class or result in class size exceeding the maximum class size.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0903 CURRICULUM

~~(a) School instructors shall use the curriculum specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools" (division publication APSM 125-1, 130-1).~~

~~(b) The program of instruction shall consist of not less than ten hours of classroom instruction as specified in the "Curriculum Manual for Alcohol and Drug Education Traffic Schools."~~

~~(c) Each school may provide up to three additional hours for classroom time and such activities as an initial student assessment, data gathering or a summary conference with students. Information regarding assessments is available in "Information for Conducting DWI Substance Abuse Assessments and Providing Treatment" (division publication APSP 125-2, 130-2).~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0904 CLASS SCHEDULE

~~(a) Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.~~

~~(b) Each student shall be scheduled to attend the first and the last class sessions in the order prescribed in the curriculum manual.~~

~~(c) Classes shall be scheduled to avoid the majority of employment and educational conflicts.~~

~~(d) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with (b) of this Standard.~~

~~(e) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0905 CLASS SIZE

~~Class size shall be limited to a maximum of 35 persons.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0906 INSTRUCTION CERTIFICATION

~~(a) Each class shall have a designated instructor who is certified by the Division.~~

~~(b) An individual seeking initial certification as an instructor shall:~~

~~(1) be a high school graduate or its equivalent;~~

~~(2) have a working knowledge of alcohol, other drugs, and traffic safety issues;~~

~~(3) complete the application required by the Division;~~

~~(4) submit the original and one copy to the DWI/Criminal Justice Branch of the Division;~~

~~(5) complete an initial in-service training program provided by the Division; and~~

~~(6) demonstrate skills by teaching all classes.~~

~~(c) The Division shall notify the applicant of the decision regarding initial certification within 60 days after receipt of the application.~~

~~(d) The duration of full certification shall be for a maximum period of two years.~~

~~(e) An applicant who does not obtain initial certification may be issued a provisional certification, and shall be:~~

~~(1) informed as to the specific reasons why full certification was denied;~~

~~(2) provided with eligibility requirements necessary to reapply for full certification; and~~

~~(3) informed regarding the right to appeal the certification decision.~~

~~(f) Recertification:~~

~~(1) Individuals seeking recertification shall submit documentation of having received a minimum of 48 clock hours of training in alcohol and drug education traffic subjects during the two years. This training shall be provided or subject to approval by~~

~~the Division. Documentation of having received this training shall be submitted to the DWI/Criminal Justice Branch at least 30 days prior to expiration prior the existing certification.~~

~~(2) An individual seeking recertification for each subsequent two-year cycle shall submit documentation of having received 30 clock hours of training in alcohol and drug education traffic subjects during the preceding two years;~~

~~(3) The training shall be provided or approved by the Division; and~~

~~(4) Documentation of this training shall be submitted to the DWI/Criminal Justice Branch of the Division at least 90 days prior to expiration of the existing certification.~~

~~(g) Revocation or suspension of certification may be issued for failure to:~~

~~(1) cover the required subjects outlined in the prescribed curriculum;~~

~~(2) maintain accurate student records;~~

~~(3) comply with certification requirements;~~

~~(4) report to the Division in a timely manner, all students who complete the prescribed course.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0907 COURT/DMV LIAISONS

~~(a) Each school shall develop and implement written procedures of liaison with the court. These procedures shall include at least the following:~~

~~(1) the procedure used to obtain referral of offenders from the court;~~

~~(2) a provision that the school will notify each student of the time, date, and location of assigned classes;~~

~~(3) the procedure for notifying the court of a student's successful completion of the course;~~

~~(4) communicating to students in writing the requirements for successfully completing the course and developing a procedure to notify the court of noncompliance cases.~~

~~(b) These procedures shall be agreed upon and signed by the designated employee of the school and, if possible, by the clerk of court, judge and district attorney.~~

~~(c) Each school shall follow the procedures in "ADETS/DMV Liaison" [division publication APSR 125-2, 130-2 (9/1/83)] adopted pursuant to G.S. 150B-14(e), for reporting compliance or non-compliance and for attending Division of Motor Vehicles' revocation hearings for offenders on probation.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

.0908 REFERRAL AND COMPLETION FORM

~~The original Division of Motor Vehicles' copy of each Alcohol and Drug Education Traffic School Referral and Completion form (DMH 2604) shall be forwarded to the Division for review within two weeks after student compliance or non-compliance.~~

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

SECTION .1000 - DRUG EDUCATION SCHOOLS (DES)

.1001 SCOPE

~~A drug education school (DES) is a prevention and intervention service which provides an educational program for drug offenders as provided in Chapter 90 of the North Carolina Controlled Substances Act and Regulations.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1002 POPULATION SERVED

~~(a) Each school shall be designed primarily to serve individuals who are using drugs at the experimental, social recreational or abusive levels, but who are not drug dependent or engaged in drug dealing.~~

~~(b) First offenders referred by the court in accordance with G.S. 90-96 and G.S. 90-113.14 (Conditional Discharges and Expunction of Records for First Offense) shall be served.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1003 OPTIONAL ENROLLMENT: NONCOURT REFERRED PARTICIPANTS

~~Each school shall establish a written policy regarding participation of persons referred from other sources. These persons shall be enrolled on a space available basis.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1004 CURRICULUM

~~(a) School instructors shall use the curriculum specified in the "North Carolina Curriculum Manual for Drug Education Schools" (division publication APSM 130-2).~~

~~(b) The program of instruction shall consist of not less than 15 hours of classroom instruction as specified in "The North Carolina Curriculum Manual for Drug Education Schools".~~

~~(c) Each school may provide up to five additional hours of activity for classroom time and such activities as parent/child communication session, data gathering or a summary conference with students.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1005 INITIAL ASSESSMENT

~~Each school shall provide an initial assessment for each potential student prior to the first class session to determine whether the student is eligible to attend the school and to determine if referral to a treatment resource is appropriate.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1006 CLASS SCHEDULE

~~(a) Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.~~

~~(b) Each student shall be scheduled to attend all sessions as described in the approved curriculum.~~

~~(c) Classes shall be scheduled to avoid the majority of employment and educational conflicts.~~

~~(d) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with (b) of this Standard.~~

~~(e) Students shall have an opportunity to complete classes within the 150 day time limit for the course specified in G.S. 90-96 and 90-113.14 (Conditional Discharges and Expunction of Records for First Offense). The course instuctor shall monitor the 150 day time limit and notify the court if the student does not complete the school within that time limit.~~

~~(f) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1007 CLASS SIZE

~~(a) Class size shall be limited to a maximum of 30 participants; however, the affective education portions of the class shall be limited to a maximum of 20 participants.~~

~~(b) Provisions shall be made for family members and guardians of students to audit classes; however, such individuals shall not be counted in the maximum class size.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1008 INSTRUCTOR CERTIFICATION

~~Each class shall have a designated instructor who is certified by the Division.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

.1009 COURT LIAISON

~~(a) Each school shall develop and implement written procedures of liaison with the court. These procedures shall include at least the following:~~

~~(1) the procedure used to obtain referral of offenders from the court;~~

~~(2) a provision that the school will notify each student of the time, date, and location of assigned classes;~~

~~(3) the procedure for notifying the court of a student's successful completion of the course;~~

~~(4) communicating to students in writing the requirements for successfully completing the course and developing a procedure to notify the court of noncompliance cases.~~

~~(b) These procedures shall be agreed upon and signed by the designated employee of the school and, if possible, by the clerk of court, judge and district attorney.~~

Statutory Authority G.S. 90-96; 90-96.01; 90-113.14; 143B-147.

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

.1101 SCOPE

~~Inpatient hospital detoxification is an inpatient substance abuse service in a hospital setting for individuals in need of alcohol or other drug detoxification who cannot be safely withdrawn from alcohol or other drugs in any setting other than in a hospital. These are individuals who have physical problems that may become life threatening and who may also have accompanying psychiatric or behavioral problems. Medical and psychiatric services are provided as necessary to support detoxification of the individual.~~

Statutory Authority G.S. 143B-147.

.1102 POPULATION SERVED

~~Inpatient hospital detoxification services shall be designed to serve substance abusers who are in need of hospital medical or psychiatric care while undergoing detoxification.~~

Statutory Authority G.S. 143B-147.

.1103 PROVISION OF SERVICES

~~The area program shall provide inpatient hospital detoxification services by one or more of the following:~~

~~(1) an inpatient hospital operated by the area program;~~

~~(2) a written agreement between the area program and a general hospital, private hospital or inpatient hospital operated by another area program; or~~

~~(3) a written referral procedure to a general hospital or private hospital.~~

Statutory Authority G.S. 143B-147.

.1104 AREA OPERATED SERVICES

~~When inpatient hospital detoxification services are operated by the area program, the facility shall be licensed as a hospital.~~

Statutory Authority G.S. 143B-147.

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

Statutory Authority G.S. 143B-147.

.1106 REFERRAL TO A TREATMENT AND REHABILITATION PROGRAM

~~Each patient who has completed detoxification shall be referred to an outpatient or residential treatment and rehabilitation program.~~

Statutory Authority G.S. 143B-147.

SECTION .1200 - PROVISION OF SOCIAL SETTING: NONHOSPITAL MEDICAL OR OUTPATIENT DETOXIFICATION SERVICES FOR INDIVIDUALS WHO ARE ALCOHOLICS

.1203 SCOPE

~~Detoxification is a basic service of the alcohol and drug abuse treatment system for individuals in need of alcohol or other drug abuse detoxification.~~

Statutory Authority G.S. 143B-147.

.1204 PROVISION OF SERVICES

~~Each area program shall provide or secure at least one of the models of social setting, nonhospital medical or outpatient detoxification services as delineated in 10 NCAC 14N .0200, .0300 and .0400.~~

Statutory Authority G.S. 143B-147.

SECTION .1300 - FORENSIC SCREENING AND EVALUATION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

.1302 POPULATION SERVED

~~Forensic services shall be designed to serve offenders and alleged offenders referred by the criminal justice system by court order.~~

Statutory Authority G.S. 143B-147.

.1303 FORENSIC SCREENING AND EVALUATION

~~Forensic screening and evaluation to assess capacity to proceed to trial shall be provided by evaluators trained and registered in accordance with the provisions of 10 NCAC 18F .0115 through .0122; TRAINING AND REGISTRATION OF FORENSIC EVALUATORS (Division publication APSR-100-3).~~

Statutory Authority G.S. 15A-1002; 143B-147.

.1304 CONSULTATION TO LAW ENFORCEMENT OFFICIALS

~~Consultation to law enforcement officials, including consultation prior to the commitment of an offender or alleged offender to any state psychiatric hospital, shall be provided.~~

Statutory Authority G.S. 143B-147.

.1305 JUSTICE TREATMENT SERVICES

~~(a) Each area program shall develop and implement a written justice treatment services plan which shall provide for the coordination of area program court related activities with the criminal justice system.~~

~~(b) An individual shall be designated who has responsibility for developing and implementing the justice treatment services plan.~~

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

.1401 SCOPE

~~(a) An early childhood intervention service (ECIS) is a periodic service designed to promote the developmental growth of a child who is mentally retarded or otherwise developmentally disabled or delayed or who has atypical development or is at high risk for mental retardation, developmental disabilities or delays or atypical development. In addition, it provides families with support and information on child rearing skills and management, and services and resources available to the child and family. The service provides, on a regularly scheduled basis, comprehensive assessment and prescriptive developmental programming in such areas as cognitive, language and communication, physical, self help, and psychosocial skill development in the client's home which may be supplemented by individual or group services at other sites. This service provides case specific and general follow up and consultation to other preschool programs. Case management is also a component of this service.~~

~~(b) The primary methodology of service delivery is periodic (usually weekly) home visits which may be supplemented by group or individual activities at sites other than the child's home.~~

Statutory Authority G.S. 143B-147; 20 USC 1471.

.1402 PROGRAM DIRECTOR

~~Each ECIS shall have a designated program director who holds at least a baccalaureate degree in a field related to developmental disabilities, or is registered to practice as a~~

~~registered nurse in the State of North Carolina, and who has at least one year's experience in services for infants or toddlers with or at risk for developmental delays or atypical development. This includes, but is not limited to early childhood education, child development, or special education.~~

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

.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) Assessments shall be conducted in accordance with 10 NCAC 14K .0314.~~

Statutory Authority G.S. 143B-147; 20 USC 1471.

.1405 INDIVIDUAL TREATMENT/ HABILITATION PLAN

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

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

.1406 LANGUAGE/COMMUNICATION AND HEARING SERVICES

~~Each ECIS shall provide or secure language, communication and hearing services for each child in need of such service. This service shall include assessment, programming, prescription, monitoring and specialized diagnostic services.~~

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

.1407 PHYSICAL THERAPY SERVICES

~~Each ECIS shall provide or secure physical therapy services for each child in need of such services. These services shall include assessment, programming, prescription monitoring, and specialized diagnostic services.~~

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

.1408 PARENT COUNSELING SERVICES

~~Each ECIS shall provide or secure counseling services for parents in need of such services.~~

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

.1409 BEHAVIOR MANAGEMENT TRAINING FOR PARENTS

~~Each ECIS shall provide or secure training in behavior management techniques for parents in need of such services.~~

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

.1410 FOLLOW-ALONG

~~Follow along shall be provided semi-annually for one year on behalf of children who have been discharged from the ECIS.~~

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

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

SECTION .0100 - EMPLOYEE ASSISTANCE PROGRAMS (EAP)

.0105 SCOPE

~~An employee assistance program (EAP) is an assessment service which provides early identification, motivation, and referral for individuals with poor job performance in any given work setting due to a variety of personal situations including alcohol and drug related problems, family and marital problems, and emotional and psychological problems. The service is offered in partnership with employers with whom the area program has a written agreement and provides employee education, supervisory training, referral, follow up and program evaluation.~~

Statutory Authority G.S. 143B-147.

.0106 POPULATION SERVED

~~Each EAP shall be designed to serve individuals who have personal problems which affect or potentially affect their job performance.~~

Statutory Authority G.S. 143B-147.

.0107 STAFF REQUIRED

~~An individual shall be designated who has the responsibility for planning and implementing employee assistance programs with employers from both the public and private sector.~~

Statutory Authority G.S. 143B-147.

.0108 WRITTEN AGREEMENT

~~The EAP shall implement, within the constraints placed on it by the employer firm, a written agreement with community employers which incorporates the following:~~

~~(1) a written formal policy statement promulgated by the community employer which defines the intent of the program;~~

~~(2) identification of a program administrator by the community employer who will serve as liaison between the employer and the EAP;~~

~~(3) written procedures to be used by the community~~

~~employer in implementing its EAP;~~

~~(4) written procedures to be used by the EAP to carry out the screening and referral process; and~~

~~(5) a statement assuring the community employer that the EAP shall comply with the confidentiality regulations codified in 10 NCAC 18D (division publication APSM 45-1).~~

Statutory Authority G.S. 143B-147.

.0109 TRAINING

~~The EAP shall establish a training program to be used in promoting the utilization of the program to include the provision of at least two hours of supervisory training per year for all levels of managers and supervisors of community employers.~~

Statutory Authority G.S. 143B-147.

.0110 AWARENESS PROGRAM

~~The EAP shall implement an ongoing employee awareness program to inform employees of the availability of services.~~

Statutory Authority G.S. 143B-147.

SECTION .0200 - SPECIALIZED FOSTER CARE SERVICES

.0204 SCOPE

~~Specialized foster care is a support service provided cooperatively by the area program and the local department of social services or other licensed child care agency for individuals with developmental disability who are in the custody of or whose parents have entered into a boarding home agreement with the local department of social services or other licensed child care agency. Individuals up to 21 years of age may be served if they are involved in an ongoing educational program provided by the public school system or an adult day service provided by an adult developmental activity program or community college system. Support activities include funding, monitoring and evaluation, program coordination, parent training, development and implementation of individual treatment or goal plans, and consultation and technical assistance.~~

Statutory Authority G.S. 131D, Article 1A; 143B-147; 143B-153.

.0205 POPULATION SERVED

~~(a) Specialized foster care services of the area program shall be designed to serve those individuals in whose behalf area program funds are directed to foster parents in exchange for the provision of individualized prescriptive programming.~~

~~(b) Individuals in whose behalf specialized foster care services are provided shall be:~~

~~(1) in the legal custody of the county department of social services or other licensed child care agency; or~~

~~(2) minors in whose behalf parents have entered into a boarding home agreement with the county department of social services or other licensed child care agency.~~

Statutory Authority G.S. 122C-51; 131D-10; 143B-147; 143B-153.

.0206 APPROVED FOSTER HOMES

~~Each foster home shall be licensed by the Department of Human Resources and supervised by the county department of social services or other licensed child care agency and shall meet the criteria for receipt of Title XX (P.L. 97-35) foster care special services funds as specified in 10 NCAC 41F and J. The criteria are available for review at each county department of social services' office.~~

Statutory Authority G.S. 131D-10.3; 143B-147.

.0207 SELECTION OF SPECIALIZED FOSTER PARENTS

~~The selection of specialized foster parents shall be jointly approved by the county department of social services or other licensed child care agency and the area program.~~

Statutory Authority G.S. 122C-51; 131D-10; 143B-147; 143B-153.

.0208 APPROVAL OF FOSTER CARE PLACEMENT

~~Final approval of foster care placement shall be a responsibility of the county department of social services or other licensed child care agency.~~

Statutory Authority G.S. 122C-51; 131D-10; 143B-147; 143B-153.

.0209 PLACEMENT CARE AGREEMENT

~~(a) The area program shall negotiate a placement care agreement with the specialized foster care parents in behalf of each individual for whom the area program contracts for specialized foster care services.~~

~~(b) The agreement shall include provisions related to the following:~~

~~(1) commitment by the foster parents to participate in needed treatment programs related to the foster placement;~~

~~(2) commitment from the foster parents to participate with area program staff in the development and implementation of individualized quarterly treatment or goal plans;~~

~~(3) commitment by the foster parents to receive consultation and technical assistance from the area program; and~~

~~(4) commitment by the foster parents that any decision to terminate services shall be negotiated among the foster parents, the area program and county department of social services consistent with the termina-~~

~~tion clause of the agreement.~~

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

.0210 TRAINING FOR SPECIALIZED FOSTER PARENTS

~~(a) The area program shall assure that specialized foster parents have access to, and participate in, initial and ongoing training pertinent to the needs of the individual in their care.~~

~~(b) Specialized foster parents shall have educational preparation, training or experience identified in the Title XX Guidelines for Specialized Foster Care for Children with Special Needs. The guidelines are contained in Volume I, Family Services Manual, Chapter IV, Section 1219, which is available through the county department of social services.~~

Statutory Authority G.S. 122C-51; 131D-10; 143B-147; 143B-153.

.0211 STAFF RESPONSIBILITIES

~~The area program shall designate a staff member responsible for the provision or arrangement of support activities in behalf of each individual for whom the area program contracts for foster care services.~~

Statutory Authority G.S. 122C-51; 131D-10; 143B-147; 143B-153.

.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) 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

.0305 SCOPE

~~Prevention services shall include information, consultation, education and instruction for the general population.~~

Statutory Authority G.S. 143B-147.

.0306 STAFF REQUIRED

~~The prevention service shall have a designated director.~~

Statutory Authority G.S. 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

.0901 SCOPE

~~An area board may enter into a written agreement with general hospitals or private psychiatric hospitals for the provision of inpatient psychiatric services for children, adolescent, adult and elderly individuals who are mentally ill. These services include 24 hour per day short term treatment, supportive care, and close supervision, under the direction of a psychiatrist.~~

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

.0902 POPULATION SERVED

~~The inpatient psychiatric service shall be designed to provide services to individuals who require continuous treatment for moderate or severe mental illness. Individuals who in addition to mental illness have other disorders, such as mental retardation or substance abuse, shall be eligible for admission. If the hospital is used for detoxification of alcoholics, then Standards .1101, .1102, .1104 and .1106 in 10 NCAC 18M .1100 Inpatient Hospital Detoxification Services For Individuals Who are Alcohol Or Other Drug Abusers shall apply.~~

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

.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.~~

~~(b) When services are provided out of State, the written agreement shall be approved by the Division.~~

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

SECTION .1000 - CONTRACTED STATE HOSPITAL PSYCHIATRIC INPATIENT SERVICES FOR CHILDREN: ADOLESCENT: ADULT AND ELDERLY INDIVIDUALS WHO ARE MENTALLY ILL

.1001 SCOPE

~~An area board may enter into a written agreement with a proximate state hospital for the provision of inpatient psychiatric services for children, adolescent, adult and elderly individuals who are mentally ill. These services include 24 hour per day intensive treatment, supportive care, and close supervision, under the direction of a psychiatrist.~~

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

.1002 POPULATION SERVED

~~The inpatient psychiatric service shall be designed to provide services to individuals who require continuous treatment and close supervision for moderate or severe mental illness. Individuals who in addition to mental illness have other disorders, such as mental retardation or substance abuse, shall be eligible for admission.~~

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

.1003 AREA PROGRAM/HOSPITAL AGREEMENT

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

~~(1) criteria for service availability for area program patients;~~

~~(2) provision of services to both voluntary and involuntary 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) When services are provided out of State, the written agreement shall be approved by the Division.~~

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

.1004 AREA STAFF INVOLVEMENT IN SERVICE PROVISION

~~The involvement of clinical staff members of the area program in services provided to area clients shall be specified in the agreement. The agreement shall specify area staff roles and roles of the hospital staff in admission to inpatient services, diagnosis and evaluation, development of the treatment plan, provision of treatment, discharge planning and discharge decisions. In addition, the agreement shall be in compliance with admission rules for the regional psychiatric hospitals of the Division as codified in 10 NCAC 15A Section .0100 VOLUNTARY ADMISSIONS, INVOLUNTARY COMMITMENTS AND DISCHARGES OF ADULTS FROM REGIONAL PSYCHIATRIC HOSPITALS and Section .0200 VOLUNTARY ADMISSIONS, INVOLUNTARY COMMITMENTS AND DISCHARGES OF MINORS TO AND FROM REGIONAL PSYCHIATRIC HOSPITALS.~~

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

SUBCHAPTER 18Q - OPTIONAL SERVICES FOR INDIVIDUALS WHO ARE DEVELOPMENTAL DISABLED

SECTION .0200 - BEFORE/AFTER SCHOOL AND SUMMER DEVELOPMENTAL DAY SERVICES FOR CHILDREN WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

.0284 CROSS-REFERENCE TO INTRODUCTION

~~Before/after school and summer developmental day services not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0501.~~

Statutory Authority G.S. 143B-147.

.0286 CROSS-REFERENCE TO HOURS OF OPERATION

~~Before/after school and summer developmental day services not subject to licensure under G.S. 122C, Article 2 shall comply with the hours of operation requirements delineated in 10 NCAC 14M .0502.~~

Statutory Authority G.S. 143B-147.

.0287 PROGRAM REQUIREMENTS

~~Each before/after school service or summer service shall comply with Standards .0704 through .0714, with the exception of .0704(d) and (e), .0708(b)(2), and .0711, of 10 NCAC 18M, Section .0700, DEVELOPMENTAL DAY CENTERS FOR PRESCHOOL CHILDREN WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES OR DELAYS OR AT RISK FOR MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES OR DELAYS.~~

Statutory Authority G.S. 143B-147.

SECTION .0500 - COMMUNITY RESPITE SERVICES FOR INDIVIDUALS WITH MENTAL

RETARDATION, OTHER DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DELAYS OR AT RISK FOR THESE CONDITIONS

.0520 SCOPE

~~(a) Community respite is a support service which provides periodic relief for a family or family substitute on a temporary basis. While overnight service is available, community respite may be provided to individuals for periods of less than 24 hours on a day or evening basis.~~

~~(b) Attention to the client's everyday nutritional, recreational, emotional, developmental and physical needs are elements of respite care. The service is primarily a family support service rather than an habilitative service, however, such activities as training, therapy and medical treatment, if provided, are ancillary to the provision of respite care.~~

~~(c) The following three models are examples of respite services:~~

~~(1) center based respite is a support service in which the individual is served at a designated facility which has potential for overnight care. While an overnight capacity is always a part of this service, a respite center may, in addition, provide respite services to individuals for periods of less than twenty four hours on a day or evening basis;~~

~~(2) private home respite is a support service in which the area program or its contract agency contracts with community citizens to serve individuals in their own home on an overnight basis; or~~

~~(3) companion respite is a support service in which a trained respite provider is scheduled to care for the individual in a variety of settings, including the individual's own home or other location not subject to licensure.~~

Statutory Authority G.S. 143B-147.

.0521 CROSS-REFERENCE TO POPULATION SERVED

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0702.~~

Statutory Authority G.S. 143B-147.

.0538 COMPANION SITTER: APPROVAL OF PROVIDERS

~~Each governing body shall develop and implement written criteria for the approval of providers and the sites where services may be provided.~~

Statutory Authority G.S. 143B-147.

.0539 COMPANION SITTER: PROVIDER TRAINING

~~Each provider shall complete the pre-service training program prescribed by the governing body. Training may include a basic understanding of developmental disabilities, first aid and seizure management.~~

Statutory Authority G.S. 143B-147.

.0540 COMPANION RESPITE: AGREEMENT WITH PROVIDERS

~~(a) Unless outlined in a written job description for providers or in written policies and procedures, each governing body shall have a written agreement signed by each provider of private home respite care.~~

~~(b) The provisions of the agreement shall specify the responsibilities of the governing body and the provider including:~~

~~(1) confidentiality requirements;~~

~~(2) procedures for securing emergency services;~~

~~(3) program activities to be implemented;~~

~~(4) responsibilities for supervising the respite client;~~

~~(5) procedures related to administration of medications;~~

~~(6) participation in respite training programs;~~

~~(7) terms of compensation;~~

~~(8) client rights; and~~

~~(9) adherence to agency policies and procedures.~~

~~(c) A signed copy of the agreement shall be maintained by the governing body, and a signed copy shall be given to the provider.~~

Statutory Authority G.S. 143B-147.

.0541 COMPANION RESPITE: RESPONSIBILITIES OF GOVERNING BODY

~~Each governing body shall:~~

~~(1) attempt to match the client's needs with the provider's ability to provide respite services;~~

~~(2) make available to the provider instructions regarding duties and responsibilities which shall include, but need not be limited to:~~

~~(a) length of time for which service will be provided;~~

~~(b) medications to be administered; and~~

~~(c) special dietary considerations; and~~

~~(3) furnish written information to the provider, if the client is involved in a developmental or occupational program, 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.~~

Statutory Authority G.S. 143B-147.

.0542 PROGRAM DIRECTOR

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0704.~~

Statutory Authority G.S. 143B-147.

.0543 FAMILY SERVICES COORDINATOR

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0706.~~

Statutory Authority G.S. 143B-147.

.0544 AGE OF STAFF MEMBERS

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0705.~~

Statutory Authority G.S. 143B-147.

.0545 LENGTH OF STAY

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0708.~~

Statutory Authority G.S. 143B-147.

.0546 PERSONAL CARE

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0707.~~

Statutory Authority G.S. 143B-147.

.0547 RESPITE ACTIVITIES

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0709.~~

Statutory Authority G.S. 143B-147.

.0548 MEDICAL STATEMENT

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0710.~~

Statutory Authority G.S. 143B-147.

.0549 PRIVATE HOME SERVICES: PROVIDER APPLICATION

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0713.~~

Statutory Authority G.S. 143B-147.

.0550 PRIVATE HOME SERVICES: PROVIDER TRAINING

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0714.~~

Statutory Authority G.S. 143B-147.

.0551 PRIVATE HOME SERVICES: AGREEMENT WITH PROVIDERS

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0715.~~

Statutory Authority G.S. 143B-147.

.0552 PRIVATE HOME SERVICES: RESPITE SERVICE RESPONSIBILITIES

~~Each community respite service not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14M .0716.~~

Statutory Authority G.S. 143B-147.

TITLE 12 - DEPARTMENT OF JUSTICE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice/State Bureau of Investigation/Division of Criminal Information intends to amend rule cited as 12 NCAC 04E .0104.*

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 9:00 a.m. on July 20, 1995 at the N.C. State Bureau of Investigation, 407 North Blount Street, Raleigh, NC 27601.*

Reason for Proposed Action: *To allow access to driver histories by "limited access" DCI terminal agencies.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from 7/3/95 to 8/3/95. Such written comments must be delivered or mailed to the State Bureau of Investigation/Division of Criminal Information, 407 N. Blount Street, Raleigh, NC 27601.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 4 - DIVISION OF CRIMINAL INFORMATION

SUBCHAPTER 4E - ORGANIZATION RULES AND FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0104 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

(1) "Administration of Criminal Justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, and correctional supervision or rehabilitation of accused criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(2) "Administrative Message" means messages that may

be used by DCI terminal operators to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of NLETS.

(3) "Authorized Requestor" means any person who is authorized and/or approved to receive state and/or national criminal history data by virtue of being:

(a) a member of an approved law enforcement/criminal justice agency; or

(b) any DCI or NCIC authorized non-criminal justice agency pursuant to local ordinance or a state or federal law.

(4) "Automated Fingerprint Identification System" (AFIS) means a computer based system for reading, encoding, matching, storage and retrieval of fingerprint minutiae and images.

(5) "CCH" means computerized criminal history.

(6) "Criminal History Record Information" (CHRI) means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This also includes any disposition, sentencing, correctional supervision, and release information. This term does not include identification information such as fingerprint records to the extent that such information does not indicate formal involvement of the individual in the criminal justice system.

(7) "Criminal Justice Agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates over 50 percent of its annual budget to the administration of criminal justice.

(8) "Criminal Justice Board" means a board composed of heads of law enforcement/criminal justice agencies which have management control over a communications center.

(9) "DCI" means Division of Criminal Information.

(10) "DCI Manual" means a manual containing guidelines for users on the operation of the DCI equipment and providing explanations as to what information may be accessed through the DCI.

(11) "Direct Access" means an authorized agency has access to the DCI network through a DCI terminal or through a computer interface.

(12) "Disposition" means information on any action which results in termination or indeterminate suspension of the prosecution of a criminal charge.

(13) "Driver's History" means information maintained on individual operators to include name, address, date of birth, license issuance and expiration information or control number issuance information, and moving vehicle violation convictions.

(14) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.

(15) "DMV" means the North Carolina Division of Motor Vehicles.

(16) "Expunge" means to remove criminal history record information from the DCI and FBI computerized criminal history and identification files pursuant to state statute.

(17) "Full Access" means the ability of a terminal to access those programs developed and administered by the DCI for local law enforcement and criminal justice agencies specifically including state and national CCH and driver history access.

(18) "Full-certification" means being operator certified with the ability and knowledge to use the DCI terminal accessing those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies.

(19) "Hardware" means the physical computer equipment or devices and the peripheral equipment forming the DCI information processing system including the Automated Fingerprint Identification System (AFIS).

(20) "Hot Files" means DCI/NCIC files which contain information on stolen and recovered property and wanted/missing persons as entered by agencies across the nation.

(21) "Inappropriate Message" means any message which is incomplete, unnecessary, excessive, abusive, or not in keeping with the rules and regulations of DCI.

(22) "Incident Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.

(23) "Indirect Access" means access to DCI through another agency's direct access terminal.

(24) "In-service Certification" means an operator's certification program provided by local departments and approved by DCI to certify and/or re-certify their employees.

(25) "Interstate Identification Index (III)" means the FBI's files containing identifying information on persons who have been arrested in the United States for which fingerprints have been submitted to and retained by the FBI.

(26) "Interface" means a method (either software or hardware) to communicate between two computers or computer systems.

(27) "IRKS" means an internal records keeping system which DCI makes available to North Carolina criminal justice agencies. Included in IRKS is a jail record keeping system (JRKS).

(28) "JRKS" means a jail record keeping system that aids agencies in accounting for their jail detainees.

(29) "Limited Access" means the ability of a terminal to access those programs which are developed and administered by the DCI for local law enforcement and criminal justice agencies specifically excluding state and national CCH. ~~and driver history access.~~

(30) "National Fingerprint File (NFF)" means an FBI

maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level. Arrest fingerprint cards from the same state for subsequent arrests as well as final dispositions and expungements will be maintained at the state level.

(31) "NCIC" means the National Crime Information Center which is maintained in Washington, D.C. by the FBI.

(32) "Need-to-know" means for purposes of the administration of criminal justice or for purposes of criminal justice agency employment.

(33) "NLETS" means National Law Enforcement Telecommunications System, which is maintained in Phoenix, Arizona.

(34) "Non-criminal Justice Agency" means any agency created by law with the statutory authority to access State Bureau of Investigation criminal history files for purposes of non-criminal justice licensing or employment.

(35) "Non-criminal Justice Information" means information that does not directly pertain to the necessary operation of a law enforcement/criminal justice agency.

(36) "Official Record Holder" means the eligible agency that maintains the master documentation and all investigative supplements of the hot file entry.

(37) "Operator Identifier" means a unique identifier assigned by DCI to all certified operators which is used for gaining access to the DCI network and for the identification of certified operators.

(38) "Ordinance" means a rule or law promulgated by a governmental authority especially one adopted and enforced by a municipality or other local authority.

(39) "ORI" means originating routing identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice agency, identifying that agency in all computer transactions.

(40) "Private Agency" means any agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.

(41) "Re-certification" means renewal of an operator's initial certification every 24 months.

(42) "Right-to-know" means for the right of an individual to inspect his or her own record or for other purposes as set forth by statute or court order.

(43) "Secondary Dissemination" means the transfer of CCH/CHRI information to anyone legally entitled to receive such information who is outside the initial user agency.

(44) "Servicing Agreement" means an agreement between a terminal agency and a non-terminal agency to provide DCI terminal services.

(45) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

(46) "Statute" means a law enacted by a state's legislative branch of government.

(47) "Switched Message" means messages that may be used by DCI terminal personnel to exchange official information between law enforcement/criminal justice agencies within North Carolina.

(48) "Terminal" means a video screen with a typewriter keyboard used by DCI to accomplish message switching, DMV inquiries, functional messages, and DCI, NCIC, NLETS on-line file transactions.

(49) "Terminal Agency" means any agency that has obtained a DCI terminal.

(50) "UCR" means a Uniform Crime Reporting program to collect a summary of criminal offense and arrest information.

(51) "Unapproved need-to-know" means any reason for requesting criminal or driver's history data which is not within the scope of authorized purpose codes as defined in the DCI on-line manual.

(52) "User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules and regulations.

Statutory Authority G.S. 114-10; 114-10.1.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend rules cited as 12 NCAC 7D .0201, .0301, .0401, .0701, .0706, .0801, .0806, .0902, .0904.

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 2:00 p.m. on July 18, 1995 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, North Carolina 27626.*

Reason for Proposed Action:

12 NCAC 7D .0201, .0701, .0706, .0801, .0806, .0902, .0904 *- The amendment will require applicants to pay for the criminal record checks which are conducted by the State Bureau of Investigation for the applicant.*

12 NCAC 7D .0301, .0401 *- The amendment allows the Board to give experience credit for applicants who have obtained an associate's degree, a bachelor's degree, or a graduate degree.*

Comment Procedures: *Interested persons may present their view either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments on the proposed text for 30 days after the text is published in the North Carolina Register or until the date of the public hearing, whichever is longer. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, NC 27626-0500.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

.0201 APPLICATION FOR LICENSES AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) one recent head and shoulders photograph(s) of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months; ~~and~~

(4) the applicant's non-refundable application ~~fee.~~ fee; and

(5) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor.

(c) Private investigator trainees applying for a license must make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.

Statutory Authority G.S. 74C-2; 74C-5; 74C-8.

SECTION .0300 - SECURITY GUARD AND PATROL: GUARD DOG SERVICE

.0301 EXPERIENCE REQUIREMENTS/SECURITY GUARD AND PATROL LICENSE

(a) In addition to the requirements of 12 NCAC 7D .0200, applicants for a security guard and patrol license shall:

(1) establish to the Board's satisfaction three years experience within the past 10 years as a manager, supervisor, or administrator with a contract security company or a proprietary security organization performing guard and patrol functions; or

(2) establish to the Board's satisfaction three years experience within the past 10 years as a manager, supervisor, or administrator in security with any federal, U.S. Armed Forces, state, county, or municipal law enforcement agency performing guard and patrol functions.

(b) The Board ~~may~~ will give ~~up to two years~~ credit toward the experience requirements set forth in (a)(1) and (2) of this Rule as follows:

~~(1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited community college, college or university;~~

~~(2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or~~

~~(3) two years of credit for a Bachelor's Degree, Master's Degree or Doctorate in Security or Criminal Justice or the equivalent conferred by an accredited college or university.~~

(1) An applicant will receive a minimum of 400 hours of experience credit for an associate's degree. The Administrator or the Board may grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.

(2) An applicant will receive 800 hours of experience credit for a bachelor's degree. The Administrator or the Board may grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.

(3) An applicant will receive 1,200 hours of experience credit for a graduate degree. The Administrator or the Board may grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

(c) Persons licensed under Chapter 74D of the General Statutes of North Carolina, may be issued a limited guard and patrol license exclusively for providing armed alarm responders.

Statutory Authority G.S. 74C-5; 74C-8; 74C-13.

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

.0401 EXPERIENCE REQUIREMENTS FOR A PRIVATE INVESTIGATOR LICENSE

(a) In addition to the requirements of G.S. 74C-8 and 12 NCAC 7D .0200, applicants for a private investigator license shall:

(1) establish to the Board's satisfaction three years of

verifiable experience within the past 10 years while conducting investigations as defined in G.S. 74C-3(a)(8) with a contract security company or with a private person, firm, association or corporation; or

(2) establish to the Board's satisfaction three years of verifiable experience within the past 10 years while conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 7D .0104(9) with any Federal, U.S. Armed Forces, state, county, municipal law enforcement agency or other governmental agency.

(b) The Board ~~may~~ will give ~~up to two years~~ credit toward the experience requirements set forth in Paragraph (a) of this Rule as follows:

~~(1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited community college, college or university;~~

~~(2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or~~

~~(3) two years of credit for a Bachelor's Degree, Master's Degree or Doctorate in Security or Criminal Justice or the equivalent conferred by an accredited college or university.~~

(1) An applicant will receive a minimum of 400 hours of experience credit for an associate's degree. The Administrator or the Board may grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.

(2) An applicant will receive 800 hours of experience credit for a bachelor's degree. The Administrator or the Board may grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.

(3) An applicant will receive 1,200 hours of experience credit for a graduate degree. The Administrator or the Board may grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

(c) Time spent teaching police science subjects at a post-secondary educational institution (such as a community college, college or university) shall toll the time for the minimum year requirements in 12 NCAC 7D .0401(a). For the purposes of this Section, "toll" means that the experience gained by an applicant immediately prior to beginning teaching shall not be discredited. "Toll" shall not mean that credit is given for teaching police science subjects.

Statutory Authority G.S. 74C-5(2).

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

.0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 48 months; ~~and~~

(4) the applicant's non-refundable registration ~~fee.~~ fee; and

(5) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employers's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0707 shall be submitted to the Administrator not later than 80 days from the hiring of an unarmed security guard.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

Statutory Authority G.S. 74C-5; 74C-11; 74C-13.

.0706 RENEWAL OR REISSUE OF UNARMED SECURITY GUARD REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(2) statements of any criminal record obtained from the

appropriate authority in each area where the applicant has resided within the immediate preceding 12 months; ~~and~~

(3) the applicant's renewal ~~fee.~~ fee; and

(4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size, and

(2) the applicant's reissue fee.

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.

Statutory Authority G.S. 74C-5; 74C-11.

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

.0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 48 months;

(4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;

(5) ~~(4)~~ the applicant's non-refundable registration fee; and

(6) ~~(5)~~ a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) Applications submitted without firearms certificates shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the administrator and provides satisfactory proof that the applicant has received prior firearms training.

(e) The provisions of (a), (b), and (c) of this Rule shall also apply to any employee whose employment is terminated within 30 days of employment.

Statutory Authority G.S. 74C-5; 74C-13.

.0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(2) statements of any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months; ~~and~~

(3) the applicant's renewal ~~fee.~~ fee; and

(4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0807.

Statutory Authority G.S. 74C-5; 74C-11; 74C-13.

SECTION .0900 - FIREARMS TRAINER CERTIFICATE

.0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) one recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;

(4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;

(5) ~~(4)~~ the applicant's non-refundable application fee; and

(6) ~~(5)~~ a certificate of successful completion of the training required by 12 NCAC 7D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the application.

Statutory Authority G.S. 74C-5; 74C-13.

.0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

(1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Attorney General consisting of a minimum of 8 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, control and safety procedures, and methods of handgun and shotgun firing. This training shall have been completed within 60 days of the submission of the renewal application;

(2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 months; ~~and~~

(3) the applicant's renewal ~~fee.~~ fee; and

(4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;

Statutory Authority G.S. 74C-5; 74C-13.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Sedimentation Control Commission intends to amend rules cited as 15A NCAC 4A .0001, .0005; 4B .0016, .0020; 4C .0007 - .0008, .0010; 4D .0002; adopt rules cited as 15A NCAC 4B .0029 - .0030; and repeal rule cited as 15A NCAC 4D .0003.

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 2:00 p.m. on July 18, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.*

Reason for Proposed Action: *These proposed actions are necessary to clarify and define statutory provisions which resulted from the ratification of H.B. 644. 15A NCAC Chapter 4, Sedimentation Control must now conform with these legislative amendments to G.S. 113A-50 et. seq., the Sedimentation Pollution Control Act of 1973 (SPCA).*

Comment Procedures: *Any person requiring information may contact Mr. Craig Deal, Land Quality Section, P.O. Box 27687, Raleigh, North Carolina 27611 - Telephone - (919) 733-4574. Written comments may be submitted to the above address no later than August 2, 1995.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 4 - SEDIMENTATION CONTROL

SUBCHAPTER 4A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

.0001 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION

Persons may write or visit the North Carolina Sedimentation Control Commission offices at the Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may write or visit regional offices of the Commission's staff in the Land Quality Section of the Division of Land Resources at the following locations:

(1) Interchange Building
59 Woodfin Place
P.O. Box 370
Asheville, N.C. 28801

(2) ~~8025 North Point Blvd., Suite 100~~
~~Winston-Salem, N.C. 27106~~
585 Waughtown Street
Winston-Salem, N.C. 27107

(3) 919 North Main Street
P.O. Box 950
Mooresville, N.C. 28115

(4) 3800 Barrett Drive
P.O. Box 27687
Raleigh, N.C. 27611

(5) Wachovia Building

Suite 714
Fayetteville, N.C. 28301

(6) 1424 Carolina Avenue
P.O. Box 2188
Washington, N.C. 27889

(7) 127 Cardinal Dr., Ext.
Wilmington, N.C. 28405-3845

Statutory Authority G.S. 143B-298.

.0005 DEFINITIONS

As used in this Chapter, the following terms shall have these meanings:

(1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.

(2) "Adequate Erosion Control Measure, Structure, or Device" means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

(3) "Borrow" means fill material which is required for on-site construction and is obtained from other locations.

(4) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.

(5) "Ground Cover" means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

(6) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

(7) "Natural Erosion" means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

(8) ~~"Person Responsible for the Violation",~~ "Person who violates", as used in G.S. 113A-64, means:

(a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, the North Carolina Administrative Code, Title 15A, Chapter 4, or any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, as imposes a duty upon him.

(9) "Person Conducting Land Disturbing Activity" means any person who may be held responsible for a violation unless expressly provided otherwise by the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, the North Carolina Administrative Code, Title 15A Chapter 4, or any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66.

(10) "Phase of Grading" means one of two types of grading, rough or fine.

(11) "Plan" means an erosion control plan.

(12) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

(13) "Storm Water Runoff" means the direct runoff of water resulting from precipitation in any form.

(14) "Being Conducted" means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

(15) "Uncovered" means the removal of ground cover from, on, or above the soil surface.

(16) "Undertaken" means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

(17) "Waste" means surplus materials resulting from on-site construction and disposed of at other locations.

(18) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

(19) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

(20) "Ten Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

(21) "Velocity" means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

(22) "Discharge Point" means that point at which runoff leaves a tract of land.

(23) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

(24) "High Quality Waters" means those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments.

(25) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile of and drain to HQW's.

(26) "Director" means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

(27) "Coastal counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

(28) "Twenty-five Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Statutory Authority G.S. 113A-52; 113A-54.

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

.0016 EXISTING UNCOVERED AREAS

(a) All uncovered areas which:

(1) existed on the effective date of these Rules;

(2) resulted from land-disturbing activity;

(3) exceed one acre;

(4) are experiencing continued accelerated erosion; and

(5) causing off-site damage from sedimentation, shall be provided with ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(b) The commission or local government shall serve a notice to comply upon the landowner or other person in possession or control of the land by ~~registered or certified mail or other means reasonably calculated to give actual notice such as service by the sheriff's department or hand delivery.~~ any means authorized under G.S. 1A-1, Rule 4. The notice shall state the measures needed and the time allowed for compliance. The commission or local government issuing the notice shall consider the economic feasibility, technological expertise and quantity of work required, and shall establish reasonable time limits for compliance.

(c) State agency erosion and sedimentation control programs submitted to the commission for delegation of authority to administer such programs shall contain provisions for the treatment of existing exposed areas. Such provisions shall consider the economic feasibility, existing technology, and quantity of work required.

(d) This Rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Statutory Authority G.S. 113A-54.

.0020 INSPECTIONS AND INVESTIGATIONS

(a) The Commission, Department of Environment, Health, and Natural Resources or local government shall also have the power to require written statements, or the filing ~~or~~ of reports under oath, concerning land disturbing activity.

(b) Inspection of sites shall be carried out by the staff of Department of Environment, Health, and Natural Resources or other qualified persons authorized by the Commission or Department of Environment, Health, and Natural Resources as necessary to carry out its duties under the Act.

(c) No person shall refuse entry or access to any authorized representative of the Commission or any authorized representative of a local government who requests entry for purposes of inspection, and who presents appropriate credentials~~, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties~~.

Statutory Authority G.S. 113A-54(b); 113A-58; 113A-61.1.

.0029 EROSION CONTROL PLAN EXPIRATION DATE

An erosion control plan shall expire three years following the date of approval, if no land-disturbing activity has been undertaken.

Statutory Authority G.S. 113A-54.1(a).

.0030 EMERGENCIES

Any person who conducts an emergency repair essential to protect human life, that constitutes a land-disturbing activity within the meaning of G.S. 113A-52(6) and these Rules:

(1) shall notify the Commission of such repair as soon as reasonably possible, but in no event later than five working days after the emergency ends; and

(2) shall take all reasonable measures to protect all public and private property from damage caused by such repair as soon as reasonably possible, but in no event later than 15 working days after the emergency ends.

Statutory Authority G.S. 113A-54(b); 113A-52.01(4).

SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES

.0007 PROCEDURES: NOTICES

(a) ~~Prior to the assessment of any civil penalty pursuant to G.S. 113A-64(a)(1) and 113A-64(a)(4), notice of the violation shall be given the alleged violator(s) or his (their) agent(s) by registered or certified mail or other means reasonably calculated to give actual notice, such as service by the sheriff's department or hand delivery, describing the violation with reasonable particularity, specifying a time period for compliance and stating that upon failure to comply the person responsible for the violation shall become subject to the assessment of a civil penalty, provided that no time period for compliance need be given for failure to submit an erosion control plan for approval~~

~~or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.~~ The notice of violation shall describe the violation with reasonable particularity and shall state that upon failure to comply, the person shall become subject to the assessment of a civil penalty.

~~(b) If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice such as service by the sheriff's department or hand delivery.~~

(b) ~~(c)~~ The stop work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to ~~G.S. 113A-64(a)(5).~~ G.S. 113A-64(a)(1). ~~No time period for compliance need be given for failure to stop work pursuant to a stop work order issued under G.S. 113A-65.1.~~ Copies of the stop work order shall be ~~delivered to~~ served upon persons the Department has reason to believe may be responsible for the violation by ~~registered or certified mail or other means reasonably calculated to give actual notice.~~ any means authorized under G.S. 1A-1, Rule 4.

Statutory Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; 143B-10.

.0008 REQUESTS FOR ADMINISTRATIVE HEARING

After receipt of notification of any assessment, the assessed person must select one of the following options within ~~60~~ 30 days:

(1) tender payment; or

(2) file a petition for an administrative hearing in accordance with G.S. 150B-23.

Statutory Authority G.S. 113A-64; 143B-10; 150B-23.

.0010 ADMINISTRATIVE HEARING

~~(a)~~ Administrative hearings shall be conducted in accordance with the procedures outlined in G.S. 150B-22 et seq. and the contested case procedures in 15A NCAC 1B 0200

~~(b) If the alleged violator requests an administrative hearing, no demand for payment shall be made by the secretary, or the director acting in the secretary's behalf, until a final decision is made by the secretary which upholds the assessment of a penalty. The demand for payment may be incorporated in the secretary's final decision.~~

~~(c) If payment is not received within 30 days following the demand, the secretary shall refer the matter to the Attorney General to institute a civil action for the collection of the penalty in the superior court of the county in which the violation occurred.~~

Statutory Authority G.S. 113A-55; 150B-22 et seq.

SUBCHAPTER 4D - LOCAL ORDINANCES

.0002 MODEL ORDINANCE

The commission has adopted a model ~~ordinance which provides the specific standards which a local erosion and sedimentation control program must meet or exceed to qualify for approval by the commission.~~ ordinance. Local governmental units wishing to establish a local erosion and sedimentation control program may obtain a copy of the model ordinance upon writing to:

North Carolina Department of Environment, Health, and Natural Resources
Land Quality Section
P.O. Box 27687
Raleigh, N.C. 27611

~~The ordinance is filed and available for inspection in the N.C. Office of Administrative Hearings.~~

Statutory Authority G.S. 113A-54(d); 113A-60.

.0003 REVISIONS TO APPROVED LOCAL ORDINANCES

~~The Commission shall only approve revisions upon determining that such revisions equal or exceed the standards of the model ordinance and have been adopted locally.~~

Statutory Authority G.S. 113A-54(d); 113A-60.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 16A .1001; and adopt rules cited as 15A NCAC 16A .1002 - .1006.

Temporary: *The proposed text in Rules 15A NCAC 16A .1001 and .1002 was filed as a temporary amendment to Rule .1001 effective July 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on October 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.*

Reason for Proposed Action: *The HIV Medications Program has sufficient funds to expand it formulary to include prophylactic treatments for the prevention of pneumocystis carinii pneumonia to low income patients who are not covered by Medicaid or insurance. The proposed rule change also changes the name of the program to reflect current operations with state funds and to identify rules in the Purchase of Care Program which are applicable to this program.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC*

27602-0629. All written comments must be received by November 1, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: *Rule 15A NCAC 16A .1001 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .1000 - HIV MEDICATIONS PROGRAM

.1001 GENERAL

~~Persons with HIV infection who qualify financially pursuant to 15A NCAC 24A .0202 shall be eligible to receive reimbursement for AZT through the Federal AIDS Drug Reimbursement Program if they document that they have or have had one of the following:~~

~~(1) CD4+ count less than 500 cells per cubic millimeter;~~

~~(2) a diagnosis of AIDS meeting the Centers for Disease Control surveillance definition as published in the Morbidity and Mortality Weekly Report which is adopted by reference in accordance with G.S. 150B-14(c); or~~

~~(3) HIV-related thrombocytopenia and less than 20,000 platelets per cubic millimeter.~~

Persons diagnosed by a medical provider to have HIV disease or HIV seropositivity, and who qualify financially pursuant to 15A NCAC 24A .0202, shall be eligible to have certain medications paid for through the HIV Medications Program.

Statutory Authority G.S. 130A-5(3).

.1002 COVERED MEDICATIONS

Reimbursement shall be provided directly to pharmacies for antiretroviral medications, used to treat HIV infection in accordance with FDA approved indications included in the official product labeling, and for sulfamethoxazole/trimethoprim and Dapsone used for the prevention and treatment of pneumocystis carinii pneumonia.

Statutory Authority G.S. 130A-5(3).

.1003 MEDICAL ELIGIBILITY

A person who is determined by a physician to be infected with the human immunodeficiency virus is medically eligible.

Statutory Authority G.S. 130A-5(3).

.1004 FINANCIAL ELIGIBILITY

Financial eligibility shall be determined in accordance with 15A NCAC 24A .0202.

Statutory Authority G.S. 130A-5(3).

.1005 APPLICATION PROCESS

(a) Applications for assistance must be submitted and will be processed in accordance with 15A NCAC 24A. All necessary forms may be obtained from the Office of Purchase of Medical Care Services, Division of Fiscal Management, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(b) Applications must be renewed at least annually for the fiscal year beginning July 1, and ending June 30. Only one pharmacy of the patient's choice shall be authorized to receive reimbursement at any given time. Changes of patient-selected pharmacy during the course of the fiscal year require the approval of the Office of Purchase of Medical Care Services.

Statutory Authority G.S. 130A-5(3).

.1006 ELIGIBLE PROVIDERS

Any pharmacy operating pursuant to a permit issued by the North Carolina Board of Pharmacy which participates in the North Carolina Medicaid Program is eligible to receive reimbursement for covered medications.

Statutory Authority G.S. 130A-5(3).

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - State Center for Health and Environmental Statistics - Vital Records Section intends to amend rule cited as 15A NCAC 19H .0702.*

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 9:00 a.m. on July 18, 1995 at the Norton Board Room, 6th Floor, Cooper Building, 225 N. McDowell Street, Raleigh, NC 27603.*

Reason for Proposed Action: *This amendment is necessary to specify current fees charged for providing vital records data for research purposes. This change will address specific fees for requests involving computer searches of five year periods, requests for data sets including individual names and other information, requests requiring computer programming, and replacement costs for the provision of data tapes.*

Comment Procedures: *Individuals requiring information concerning or copies of the proposed rule should contact: Jan Ellington, Assistant Section Chief, Vital Records Section, P.O. Box 29537, Raleigh, NC 27626-0537. Ms. Ellington may also be contacted by telephone at (919) 715-4402. Written comments may be sent to Ms. Ellington at the above address or submitted at the public hearing. Mailed written comments will be received by the division through August 2, 1995. Those desiring to speak at the hearing should contact Margie E. Rose at (919) 715-3393 by Thursday, July 13, 1995.*

Fiscal Note: *This Rule affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19H - VITAL RECORDS

SECTION .0700 - FEES AND REFUNDS

.0702 RESEARCH REQUESTS

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, stored, and disposed of; the purpose of the research; the research protocol; access limitations; and security precautions.

(b) The State Registrar may determine fees charged for preparing, searching or providing information from, or non-certified copies of the vital records based on the estimated cost of obtaining the data and rendering the service. An hourly rate or charge per name searched may be imposed. The fee shall not exceed ten dollars ($10.00) per name searched. If expedited service is specifically requested, an additional fee of ten dollars ($10.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2). The fee for computerized vital records data shall equal the total of ten dollars ($10.00) for each computer search of a five year period, ten cents ($.10) for each data set (individual name and other requested information) up to but not exceeding five thousand dollars ($5,000.00), programming costs (if necessary), and replacement costs for any data tapes provided.

(c) Vital records or data provided under this Rule shall be used only for the purposes described in the application.

Statutory Authority G.S. 130A-92(7); 130A-93.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to adopt rule cited as 16 NCAC 6D .0106.

Proposed Effective Date: *November 1, 1995.*

A Public Hearing *will be conducted at 9:30 a.m. on August 4, 1995 at the Education Building, Room 224, 301 N. Wilmington Street, Raleigh, NC 27601-2825.*

Reason for Proposed Action: *Rule is needed to clarify statewide standards for providing educational services to students who have limited English proficiency.*

Comment Procedures: *Any interested person may present comments either orally at the hearing or in writing before or at the hearing.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6D - INSTRUCTION

SECTION .0100 - CURRICULUM

.0106 LIMITED ENGLISH PROFICIENCY PROGRAMS

(a) Each superintendent or his delegate shall:

(1) identify resources available to serve limited English students;

(2) coordinate programs and services to these students and their parents in the local school administrative unit;

(3) report information concerning the identification, placement, and educational progress of these students; and

(4) report funding needs for the provision of services to these students to the SBE.

(b) LEAs shall report annually to the SBE information including but not limited to the number of students whose primary home language is other than English, the number of limited English proficient students identified and receiving services, the nature of the services, the number of limited English proficient students receiving special education services and services for the academically gifted, and data required to be reported to the U. S. Department of Education.

(c) A home language survey shall be administered to every student at the time of enrollment and maintained in the student's permanent record. LEAs shall then identify and assess every

limited English proficient student who needs assistance in order to have access to the unit's instructional programs. Each LEA which identifies limited English proficient students who need assistance shall adopt an effective method of determining the students' current level of English proficiency in order to determine what types of assistance are needed. The method used should be one of the methods listed in the department's English as a Second Language (ESL) Resource Guide or the department's Guidelines for the Identification and Assessment of National Origin Students Who Are of Limited English Proficiency, unless some other suitable method can be effectively substituted.

(d) LEAs shall adopt a program or programs for limited English proficient students who need assistance which, in the view of professional educators, has a reasonable chance of allowing students to progress in school. The program should be one described in the department's ESL Resource Guide unless some other suitable method or process can be effectively substituted. LEAs should use the guidelines for program entry criteria found in the department's ESL Resource Guide. LEAs shall conduct a program evaluation annually.

(e) LEAs shall adopt appropriate evaluative standards for measuring the progress of limited English proficient students in school and should use the guidelines for program exit criteria found in the department's ESL Resource Guide. The students shall not be maintained in alternative language programs longer than necessary based on program exit criteria but should be monitored after exiting such programs in accordance with the department's ESL Resource Guide.

(f) LEAs shall monitor the progress of limited English proficient students in English proficiency and in the BEP. When a limited English proficient student is not making progress in school, the LEA shall conduct an evaluation of the student's program and make modification as needed.

(g) Limited English proficient students should participate in the statewide testing programs in accordance the department's Guidelines for Testing Students With Limited English Proficiency. When limited English proficient students are exempted from the statewide testing program, other appropriate methods shall be used to monitor the academic progress of these students.

(h) LEAs shall promote the involvement of parents of students of limited English proficiency in the educational program of their children. LEAs shall notify national origin minority group parents of school activities which are called to the attention of other parents and these notices should be provided in the home language if feasible.

(i) LEAs shall ensure that limited English proficient students are not assigned to or excluded from special education programs because of their limited English language proficiency. Evaluation, placement, and notification to parents of students with special needs shall be conducted in accordance with the Procedures Governing Programs and Services for Children with Special Needs.

(j) LEAs shall ensure that limited English proficient students are not categorically excluded from programs for the academically gifted and other specialized programs or support services such as guidance and counseling due to limited English proficiency.

(k) LEAs should ensure that limited English proficient students are educated in the least segregative manner based on the educational needs of the student and these students should be included in all aspects of the regular school program in which they can perform satisfactorily.

(l) The department shall monitor the progress of LEAs in providing programs to all limited English proficient students using the same procedures and standards as provided in Title I - Helping Disadvantaged Children Meet High Standards.

(m) The department shall make available a list to all LEAs of teachers licensed in English as a Second Language (ESL). LEAs should support ESL training and add-on ESL licensure for teachers currently licensed in areas other than ESL.

(n) Each LEA should consider joint agreements with other LEAs to provide programs to limited English proficient students.

(o) Each LEA should coordinate services with those available at local community colleges in order to maximize efficient delivery of services to limited English proficient students and their parents.

(p) The department shall administer the Teacher Education Program Approval process so as to ensure that all participants have an opportunity to gain an understanding of and develop strategies for addressing the educational needs of limited English proficient students. The Department shall work with IHEs to expand English as a Second Language teacher training programs.

Authority G.S. 115C-12(9)c.; N.C. Constitution, Article IX, Sec. 5; 20 U.S.C. s. 1703.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 1 - NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to adopt rules cited as 21 NCAC 1 .0201, .0501 and .0701.*

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 2:00 p.m. on July 20, 1995 at the Pack Memorial Library, 67 Haywood St., Asheville, NC 28801.*

Reason for Proposed Action:

21 NCAC 1 .0201 *- To establish the procedure for renewing an acupuncture license.*

21 NCAC 1 .0501 *- To establish rules for governing the licensure of schools and colleges of acupuncture in North Carolina.*

21 NCAC 1 .0701 *- To establish the procedure for judicial*

review of board's denying issuance of a license.

Comment Procedures: *Any person may submit written comments to the Board through August 2, 1995 or speak to the Rule-Making Coordinator at the Public Hearing on July 20, 1995 at 2:00 p.m. at Pack Memorial Library Auditorium in Asheville, NC.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

SECTION .0200 - RENEWAL OF LICENSURE

.0201 RENEWAL OF LICENSURE

The procedure and requirements for renewal of license is as follows:

(1) A license shall be renewed every two years in the month of the anniversary of the initial date of licensure. Two months prior to the license renewal period, an application for renewal will be mailed to each licensee at the last address provided to the Board. Failure to receive notification during this period does not relieve the licensee of the responsibility of meeting the continuing education requirements and renewal of his/her license.

(2) An applicant for license renewal shall acknowledge on a form prepared by the Board that the licensee has completed the required continuing education units, the number of units completed, and a list of those programs completed. The licensee shall retain such receipts, vouchers or certificates as may be necessary to document completion of the continuing education units required.

(3) The licensee must pay the renewal fee prescribed in Rule .0103 of this Chapter. The licensee whose license has expired shall be subject to a late renewal fee in addition to the renewal fee. Both of these fees will be required for each licensure period lapsed.

Statutory Authority G.S. 90-455.

SECTION .0500 - SCHOOLS AND COLLEGES OF ACUPUNCTURE

.0501 QUALIFICATIONS FOR ESTABLISHING A SCHOOL FOR ACUPUNCTURE IN NORTH CAROLINA

(a) For the purposes of this Rule the terms mean:

(1) "Acupuncture school" is an academic institution which has the sole purpose of offering training in acupuncture.

(2) "Acupuncture program" is training in acupuncture offered by an academic institution which also offers training in other areas of study. A program is an established area of study offered on a continuing basis.

(b) In addition to and for the purposes of meeting the requirements of G.S. 90-454(3), an acupuncture college or program must meet the following standards:

(1) submit a completed application;

(2) submit fees as required by Rule .0103 of this Chapter;

(3) offer an Acupuncture training program that extends over a minimum of three academic years, six semesters, nine quarters or 27 months;

(4) offer education which consists of a minimum of 1800 clock hours with a minimum of 900 hours of didactic and theoretical training and 600 hours of supervised clinic. A minimum of 400 hours of the 600 hours of clinical training must be actual treatments;

(5) achieve candidacy status with the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine within one year of beginning classes and maintain accreditation throughout years of operation;

(6) provide a transcript of grades, as part of the student's record, that includes the following:

(A) name,

(B) address,

(C) date of birth,

(D) course titles,

(E) grades received,

(F) number of clock hours per course;

(7) grant a diploma stating that the student has successfully completed the educational program in acupuncture only after personal attendance in all required classes and completion of the program requirements;

(8) all teaching supervisors and resident teachers of acupuncture shall:

(A) be licensed to practice acupuncture in North Carolina; and

(B) have five years post-graduate acupuncture experience;

(9) all visiting teachers of acupuncture shall:

(A) be licensed to practice acupuncture in North Carolina; or

(B) be licensed, certified, registered or legally recognized to practice acupuncture in the state or country in which she/he practices, have education and clinical experience in acupuncture equivalent to that required to practice acupuncture in North Carolina, and serve for no more than one year as a visiting teacher of acupuncture at the Acupuncture College.

Statutory Authority G.S. 90-454.

SECTION .0700 - ADMINISTRATIVE PROCEDURES

.0701 JUDICIAL REVIEW OF BOARD'S DECISION DENYING ISSUANCE

OF A LICENSE

Whenever the North Carolina Acupuncture Licensing Board has determined that a person has failed to satisfy the Board of his qualifications and has failed to be issued a license, the Board shall immediately notify such person of its decision, and indicate in what respect the applicant has so failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the secretary of the Board at P.O. Box 25171, Asheville, NC 28813, within 60 days after receipt of the Board's decision, stating the reasons for such request. The Board shall within 20 days of receipt of such request notify such applicant of the time and place of a public hearing, which shall be held within 60 days. The burden of satisfying the Board of his qualifications for licensure shall be upon the applicant. Following such hearing, the Board shall determine whether the applicant is entitled to be licensed.

Statutory Authority G.S. 90-454.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Community Colleges intends to amend rules cited as 23 NCAC 2C .0210, .0301 and 2E .0403.

Proposed Effective Date: *January 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on August 10, 1995 at the Caswell Building, State Board Room, 200 W. Jones Street, Raleigh, NC 27603-1379.*

Reason for Proposed Action:
23 NCAC 2C .0210 *- To require salary determination policies adopted by Community Colleges to include criteria and provisions for annual salary review; and establishment of formulas, ranges, or schedules.*
23 NCAC 2C .0301 *- To allow colleges to adopt policies regulating admission and graduation of students enrolled in basic law enforcement training.*
23 NCAC 2E .0403 *- To redefine captive or co-opted groups and establish new guidelines for State Board of Community Colleges action.*

Comment Procedures: *Individuals who plan to make oral presentations must submit their remarks in writing to the hearing officer. A ten-minute or less time limit per person may be imposed for oral presentations. Interested persons may submit written statements from the date of this notice until August 10, 1995, delivered or mailed to Dr. Lloyd V. Hackley, System President, NC Community College System, 200 W. Jones Street, Raleigh, NC 27603-1379.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0200 - PERSONNEL

.0210 LOCAL COLLEGE PERSONNEL POLICIES

(a) Each local board of trustees shall adopt and publish personnel policies addressing the following issues:

(1) Adverse weather;
(2) Annual leave (vacation);
(3) Drug and alcohol use;
(4) Civil leave;
(5) Communicable disease;
(6) Compensatory leave;
(7) Definitions of the employment categories and benefits for each:
  (A) Full-time permanent,
  (B) Part-time permanent,
  (C) Full-time temporary, and
  (D) Part-time temporary;
(8) Disciplinary action addressing suspension and dismissal;
(9) Educational leave (reference 23 NCAC 2D .0103);
(10) Employee evaluation process;
(11) Employee grievance procedures;
(12) Employee personnel file;
(13) Hiring procedures (written and describing procedures used for employment of both full- and part-time employees);
(14) Leave transfer;
(15) Leave without pay;
(16) Longevity pay plan (reference 23 NCAC 2D .0109);
(17) Military leave (reference 23 NCAC 2D .0104);
(18) Nepotism (reference 23 NCAC 2C .0204);
(19) Non-reappointment;
(20) Other employee benefits;
(21) Political activities of employees (reference 23 NCAC 2C .0208);
(22) Professional development;
(23) Reduction in force;
(24) Salary determination methods for full- and part-time employees;
(25) Sexual harassment; and
(26) Tuition exemption (reference 23 NCAC 2D .0202).

(b) The salary determination policy shall address at least the following:

(1) provisions and criteria for salary determination;
(2) requirements for annual salary review; and
(3) establishment of salary formulas, ranges, or schedules.

(c) ~~(b)~~Each local board of trustees shall adopt and publish sick leave policies consistent with provisions of the State Retirement System.

(d) ~~(c)~~Each local board of trustees shall submit copies of

these policies, including amendments, to the System President's Office upon adoption.

Statutory Authority G.S. 115D-5; 115D-20.

SECTION .0300 - STUDENTS

.0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are high school graduates or who are at least 18 years of age. Student admission and placement shall be determined by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

Statutory Authority G.S. 7A-717 through 7A-726; 17C-1 through 17C-13; 17E-1 through 17E-11; 115D-1; 115D-5; 115D-20.

SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

SECTION .0400 - INDUSTRIAL SERVICES

.0403 INSTRUCTION TO CAPTIVE/CO-OPTED GROUPS

(a) A college is required to obtain State Board approval prior to providing instruction to students who are classified ~~clients or residents in a~~ captive or co-opted. ~~co-opted setting.~~ Captive or co-opted groups of students are defined as ~~This includes~~ inmates in a correctional facility; ~~correction facilities~~ military personnel on military bases when classes are designed exclusively for military personnel; clients of sheltered ~~workshops;~~ workshops, domiciliary care facilities, nursing facilities, mental retardation centers, substance abuse ~~and clients of sheltered workshops, residents of rest homes, nursing homes, alcoholic~~ rehabilitation ~~centers,~~ centers; ~~and mental retardation centers;~~ and in-patients of psychiatric hospitals. ~~mental hospitals. when the instruction is provided in their respective facility.~~

(b) ~~A college is required to obtain approval prior to providing instruction for any course on a military base.~~ Instruction to captive or co-opted groups may be approved when it is determined by the State Board that the proposed instruction for the group is not a function normally expected of the agency, and the instruction is within the purpose of the community college.

(c) ~~Classes for adult basic education, adult high school diploma, GED preparation, and compensatory education are exempt from prior approval requirements of this Rule.~~ Instruction to captive or co-opted groups may be approved in the form of curriculum courses or occupational extension courses.

(d) ~~The request and supportive information to offer a course shall be submitted to the State Board.~~ Basic Skills programs or courses are exempt from prior approval requirements of this Rule.

~~(e) Course approval for instruction to captive and co-opted groups or instruction on a military base may be approved when it is determined by the State Board that the proposed instruction for the group is not a function normally expected of the agency or the military and the instruction is within the purpose of the community college system.~~

Statutory Authority G.S. 115D-1; 115D-5.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt rules cited as 25 NCAC 1E .1410 - .1411; 1J .0613 - .0615 and amend rules cited as 25 NCAC 1D .0509; 1E .1402 - .1409; 1J .0604 - .0606, .0608, .0610 - .0612.

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 9:00 am on August 3, 1995 at the State Personnel Development Center, 101 West Peace Street, Raleigh, NC 27604.*

Reason for Proposed Action: *These Rules are proposed to be amended and adopted in order to offer guidance and clarification to state agencies in administering the provisions of Severance Salary Continuation, Family and Medical Leave, and Disciplinary Action: Suspension and Dismissal.*

Comment Procedures: *Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, NC 27603.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0509 SEVERANCE SALARY CONTINUATION

~~Severance salary continuation shall be paid to a state employee who is terminated as a result of reduction in force and for whom there is no foreseeable opportunity for reemployment at~~

~~the time of separation. This policy (Rule) provides for uniform application of severance salary continuation for employees who are involuntarily separated due to reduction in force. Payment is based on total state service supplemented by an age factor. The age factor recognizes that older employees, although protected from discrimination on the basis of age, do have a more difficult time finding new employment due to lack of transferable skills, current salary level, geographic location and other factors~~

G.S. 143-27.2 provides for severance salary continuation or a discontinued service retirement allowance when the Director of the Budget determines that the closing of a State institution or a reduction-in-force will accomplish economies in the State Budget, provided reemployment is not available. "Economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. The provisions outlined below provide for uniform application of severance salary continuation for eligible employees.

(1) Eligible Employees:

(a) A ~~permanent~~ full-time or part-time (20 hours or over) employee with a permanent appointment who does not obtain another permanent job in state government by the effective date of the reduction-in-force shall be eligible for severance salary continuation when separated. Also eligible are employees with trainee appointments who have completed six months of service, and employees who ~~attained~~ had a permanent appointment ~~status~~ prior to entering a trainee appointment. This shall not apply to employees whose reduction in force is not considered permanent; that is, employees who are ~~reducted~~ reduced in force on a temporary or seasonal basis with the expectation that they will return to work within twelve months.

(b) An employee ~~who is separated at the end of~~ with time-limited permanent probationary, temporary or intermittent appointment is not eligible for severance salary continuation.

(c) An employee ~~Employees~~ who ~~are~~ is separated on early retirement, service retirement, ~~or~~ long term disability ~~retirement~~ or with a discontinued service retirement as provided by G.S. 143-27.2 ~~are~~ is not eligible for severance salary continuation. An employee ~~Employees~~ who ~~are~~ is eligible for early or service retirement may, if it is to their advantage, elect to delay ~~their~~ the employee's retirement and receive severance salary continuation for the prescribed period.

~~(d) Employees who are reemployed after being terminated as a result of reduction in force and who have previously received severance continuation payments are only eligible to receive the difference between previous payments and the current eligibility.~~

~~(e) Employees who are reemployed from any retired status with the state and who are subsequently terminated as a result of reduction in force shall be eligible for severance salary continuation without credit for aggregate service prior to retired status.~~

(d) An employee who is receiving workers' compensation or short-term disability payments is eligible for severance salary continuation.

(e) An employee on leave with pay or leave without pay shall be separated on the effective date of the reduction-in-force, the same as other employees, and shall be eligible to receive severance salary continuation on that date.

(f) ~~Permanent~~ An employees with a permanent appointment scheduled to be separated by reduction-in-force, may accept a temporary state position or a contractual services arrangement and remain eligible to receive severance salary continuation in ~~accord~~ accordance with this ~~policy.~~ Section.

(g) ~~A permanent~~ An employee with a permanent appointment scheduled to be separated through reduction-in-force may decline a lower level position and retain eligibility for severance salary continuation.

(2) Amount and Method of Payment:

(a) Severance salary continuation shall be based on total state service (except as noted in this Rule) and supplemented by an age adjustment factor as follows:

(i) Amount of Salary Continuation:

Years of Service	Payment
Less than 1 year	2 weeks
1 but less than 5 years	1 month
5 but less than 10 years	2 months
10 but less than 20 years	3 months
20 or more years	4 months

(ii) Age Adjustment Factor:

An employee ~~Employees~~ qualify for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary will be added for each full year over 39 years of age; ~~age not to exceed 22 years (age 61). In the event an employee is not eligible for either social security benefits or retirement benefits under the Teachers' and State Employees' Retirement System, the employee may receive credit for age beyond age 61.~~ however, the ~~The~~ total age adjustment factor payment is limited by the service payment and cannot exceed the total service payments.

~~Note: At age 62, a career employee is usually eligible for social security benefits as well as benefits under the Teachers' and State Employees' Retirement System both of which have been contributed to by the state.~~

~~**Example:** Age 63; salary—twenty four thousand ($24,000* dollars/year; Service—20 years. However, the age adjustment factor cannot exceed the service factor so the age factor is limited to eight~~

~~thousand dollars ($8,000). The total payment is sixteen thousand dollars.~~

(b) The amount to be paid to part-time employees will be calculated using total state service multiplied by the prorated monthly pay.

(c) Severance salary continuation will be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, will not be included in computing average final compensation for retirement purposes.

(d) Any period covered by severance salary continuation shall not be credited as a period of state service.

(e) An employee who is reemployed in any permanent position with the state while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment. The reemploying agency shall be responsible for determining if the former employee is receiving severance salary continuation payments.

(f) If an employee dies while receiving severance salary continuation, the balance of such payment will be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment.

(g) An employee receiving severance salary continuation is not entitled to receive unemployment compensation.

(h) Funds for severance salary continuation will be provided as directed by the Office of State Budget and Management.

(3) For each employee who receives severance salary continuation, agencies shall show on the separate form, Form PD-105, the calculation and amount of such payment.

Statutory Authority G.S. 126-4(10); 143-27.2.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1400 - FAMILY AND MEDICAL LEAVE

.1402 ELIGIBLE EMPLOYEES

(a) Determining Eligibility - An employee's eligibility for Family and Medical Leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.

(b) ~~(a)~~ Permanent, Probationary, Trainee, and Time-Limited - ~~Employees~~ An employee who has been employed with State government for at least 12 months and who has ~~worked~~ been in pay status at least 1040 hours (half-time) during the previous 12 month period is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the reasons listed in this Paragraph.

(1) For the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth; (An expectant mother may also take Family and Medical Leave pursuant to paragraph B.4 of this Rule before the birth of the child for prenatal care or if her condition makes her unable to work.)

(2) For the placement of or ~~employee~~ to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption; (Family and Medical Leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.)

(3) For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or

(4) Because the employee has a serious health condition that makes the employee unable to perform one or more of the functions of the employee's position.

Leave without pay beyond the 12-week period for employees not covered under this Section shall be administered under 25 NCAC 1E .1100 Other Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.

(c) ~~(b)~~ Temporary Employees - This Section does not cover temporary employees since the maximum length of a temporary employees appointment is beyond one year, the employee shall be covered if ~~he~~ the employee has worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to intermittent appointments. ~~any other type of appointment that is not permanent, including intermittent, if the employee worked at least 1250 hours during the previous 12-month period.~~

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1403 DEFINITIONS

(a) Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.

(b) Child - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is:

(1) a biological child;

(2) an adopted child;

(3) a foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;

(4) a step-child - a child of the employee's spouse from a former marriage;

(5) a legal ward - a minor child placed by the court under the care of a guardian; or

(6) a child of an employee standing in loco parentis.

(c) Spouse - a husband or wife recognized by the State of North Carolina.

(d) Serious health ~~condition;~~ condition - an illness, injury, impairment, or physical or mental condition that involves:

(1) ~~an illness, injury, impairment, or physical or~~

~~mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider; or~~ inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from), or any subsequent treatment in connection with such impairment; or

(2) ~~any period of incapacity requiring absence from work of more than three workdays that also involves continuing treatment by a health care provider; or~~ continuing treatment by a health care provider involving one or more of the following:

(A) a period of incapacity as defined above of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(i) treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider, or

(ii) treatment on at least one occasion resulting in a regime of continuing treatment under the supervision of the health care provider (course of prescription medication, i.e., antibiotic, or therapy requiring special equipment to alleviate the health condition, i.e., oxygen)

(B) any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days (prenatal examinations, severe morning sickness).

(C) any period of incapacity or treatment due to a "chronic serious health condition", even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days, which is defined as one:

(i) requiring periodic visits or treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider;

(ii) continuing over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) which may cause episodic rather than continuing period(s) of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(D) incapacity for a permanent or long-term condition for which treatment may not be effective (alzheimers, a severe stroke or terminal stages of a disease).

(E) multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (chemotherapy, radiation, dialysis, etc.).

~~(3) continuing treatment by a health care provider for conditions so serious that, if not treated, would likely result in an absence of more than three workdays. Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and must be taken as family/medical leave, whether as paid or unpaid leave.~~

(e) Health Care Provider.

(1) a Doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina or;

(2) any other person determined by statute, credential or licensure to be capable of providing health care services which include:

(A) Podiatrists

(B) Dentists

(C) Clinical Psychologists

(D) Optometrists

(E) Chiropractors (limited to manual manipulation of spine to correct subluxation shown on radiographs)

(F) Nurse Practitioners

(G) Nurse Midwives

(H) Clinical Social Workers

(I) Christian Science Practitioners listed with First Church of Christ, Scientists in Boston, Massachusetts. (In this situation, the employee cannot object to an agency requirement to obtain a second or third certification other than a Christian Science practitioner)

(J) Health Care Providers from whom state approved group and HMO health plans will accept certification of serious health conditions to substantiate a claim for benefits

(K) Foreign Health Care Providers in above stated areas who are authorized to practice in that country and who are performing within the scope of the laws

(f) ~~(e)~~ Workweek - The number of hours an employee is regularly scheduled to work each week.

(g) ~~(f)~~ Reduced Work Schedule - A work schedule involving less hours than an employee is regularly scheduled to work.

(h) ~~(g)~~ Intermittent Work Schedule - A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually accommodate some form of regularly scheduled medical treatment.

(i) ~~(h)~~ 12-month period:

(1) the calendar year;

(2) any fixed 12-month "leave year";

(3) the 12-month period measured forward from the date any employee's first Family and Medical leave begins, or

(4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

The agency may choose either alternative provided it is applied consistently and uniformly to all employees. Employees must be given 60 days notice of any change and must not lose any benefits because of a transition.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1404 LEAVE CHARGES

(a) ~~It is the responsibility of the agency to designate leave, paid or unpaid, as family and medical leave, based on information provided by the employee. This must be done before the leave starts, or before an extension of leave is granted if the employee is already on leave. If an employee on paid leave has not provided information sufficient to determine whether it is to be designated as family and medical leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish a family and medical leave-qualifying reason for the needed leave. This does not preclude the agency from requesting the information sooner, at any time an extension is requested. If an employee takes paid leave and it is not designated by the employee or employer as family and medical leave, the leave taken does not count against the employee's entitlement. The employee has the following options for charging leave:~~ Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Rules (25 NCAC 1E .1300).

(b) ~~Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Rules (25 NCAC 1E .1300).~~ Workers' Compensation Leave - If an employee is out of workers' compensation leave drawing temporary total disability, the time away from work is not considered as a part of the family and medical leave 12-week entitlement.

(c) Compensatory Leave - The agency cannot require an employee to use compensatory time for unpaid family and medical leave.

(d) Employee Options - The employee has the following options for charging leave:

(1) For the birth of a child, the employee may choose to exhaust available vacation or sick leave, or any portion, or go on leave without pay; except that sick leave may be used during the period of disability. This applies to both parents.

(2) For the adoption of a child, the employee may choose to exhaust vacation leave, or any portion, or go on leave without pay.

(3) For the illness of an employee's child, spouse, or parent, the employee may choose to exhaust available sick or vacation leave, or any portion, or go on leave without pay.

(4) For the employee's illness, the employee shall exhaust available sick and may choose to exhaust available vacation leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

Statutory Authority G.S. 126-4(5);P.L. 103-3.

.1405 INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

(a) The employee may not take leave intermittently or on a reduced work schedule for child birth and birth related child care or for adoption unless the employee and agency agree otherwise.

(b) When medically necessary, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition. There is no minimum limitation on the amount of leave taken intermittently; however, the agency may not require leave to be taken in increments of more than one hour. If such leave is foreseeable, based on planned medical treatment, the agency may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

(c) Only the time actually taken as leave may be counted toward the 12 weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule. If the employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the agency must submit a Form PD-105 showing a change in the number of hours the employee is scheduled to work. This will result in an employee earning leave at a reduced rate.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1406 AGENCY RESPONSIBILITY

(a) ~~The employee shall give notice to the supervisor for leave requested under this Section. The employee must explain the reasons for the needed leave so as to follow the agency to determine that the leave qualifies under this Section.~~ Posting and Notification Requirements of Family and Medical Leave Act Provisions - Agencies are required to post and keep posted, in a conspicuous place, a notice explaining the Family and Medical Leave Act provisions and providing information concerning the procedures for filing complaints of violations of

the Act with the U.S. Department of Labor, Wage and Hour Division. The agency must include the provisions of this Section in all written publications, such as handbooks, etc. In addition, each time an employee provides notice of the need for family and medical leave, the agency shall provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meed these obligations.

~~(1) Birth or adoption - The employee shall give the agency no less than 30 days' notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.~~

~~(2) Planned Medical Treatment - When the necessity for leave is to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 day's notice if practicable of the intention to take leave.~~

(b) ~~If the employee will not return to work, the agency shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.~~ Notice of Eligibility - It is the agency's responsibility to determine that an employee is eligible for family and medical leave. If an employee notifies the employer of the need for family and medical leave before the employee meets the eligibility criteria, the agency is required to:

(1) confirm the employee's eligibility effective on the date leave is to start; or

(2) advise the employee when the requirement will be met.

This decision cannot be reversed. No additional notice for family and medical leave from the employee is required.

If the agency does not advise the employee whether the employee is eligible prior to the date the leave is to start, the employee will be deemed eligible. The agency shall not deny the leave.

If the employee does not give notice of the need for leave more than two workdays before beginning leave, the employee will be deemed to be eligible unless notified of ineligibility within two workdays of the date the notice is received.

(c) Designation of Leave as Family and Medical Leave. It is the responsibility of the agency to:

(1) determine that leave requested is for a family and medical leave qualifying reason, and

(2) designate leave, whether paid or unpaid, as family and medical leave even when an employee would rather not use any of his or her family and medical leave entitlement.

The key in designating family and medical leave is the qualifying reason(s), not the employee's election or reluctance to use family and medical leave or to use all, some or none of the accrued leave. The agency's designation must be based on information obtained from the employee or an employee's representative (e.g., spouse, parent, physician, etc.).

(d) Designation of Paid Leave as Family and Medical Leave.

When an employee gives notice of the need for family and medical leave and the employee is using paid leave, whether required or optional, the agency shall designate whether it qualifies for family and medical leave before the leave starts. If information is not sufficient to make the determination, the agency shall require the employee to provide the information. All leave taken can be designated as family and medical leave; however, if sufficient information was available and the designation or notice was not given, the leave cannot be designated as family and medical leave retroactively.

When an employee is on paid leave but has not given notice of the need for family and medical leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish whether the leave is for a family and medical leave qualifying reason. This does not preclude the agency from requesting the information sooner, or at any time an extension is requested.

If an absence which begins as other than family and medical leave later develops into a family and medical leave qualifying absence, the entire portion of the leave period that qualifies under the Family and Medial Leave Act may be counted as family and medical leave.

Once the agency has knowledge that the leave is being taken for a family and medical leave required reason, the agency must, within two business days absent extenuating circumstances, notify the employee that the leave is designated and will be counted as family and medical leave. The notice may be oral or in writing, but must be confirmed in writing no later than the following payday.

(e) Designation of Family and Medical Leave After Return to Work - The agency shall not designate leave that has already been taken as family and medical leave until the employee returns to work, except:

(1) if an employee is out for a reason that qualifies for family and medical leave and the agency does not leave of the reason for the leave until the employee returns to work, the agency may designate the leave as family and medical leave within two business days of the employee's return; or

(2) if the agency has provisionally designated the leave under family and medical leave and is awaiting receipt from the employee of documentation.

Similarly, the employee is not entitled to the protection of the Family and Medical Leave Act if the employee gives notice of the reason for the leave later than two days after returning to work.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1407 EMPLOYEE RESPONSIBILITY

(a) ~~The agency may require that a claim for leave because of adoption be supported by acceptable proof of adoption.~~ The employee shall give notice to the supervisor for leave requested under this Section. The employee must explain the reasons for the needed leave in order to follow the agency to determine that the leave qualifies under this Section.

(1) Birth or adoption - The employee shall give the

agency no less than 30 days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable, which means within one or two business days of when the need for leave becomes known to the employee.

(2) Planned Medical Treatment - When the necessity for leave is to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 days notice if practicable of the intention to take leave. For planned medical treatment, employee consultation with the supervisor prior to the request for family and medical leave is mandatory.

(3) Medical Emergency - In the case of a medical emergency requiring leave because of an employee's own serious health condition, an agency cannot require written advance notice.

(b) ~~The agency may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a doctor's certification which includes the following:~~ If the employee will not return to work, the agency shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

~~(1) The date on which the serious health condition began;~~

~~(2) The probable duration of the condition;~~

~~(3) The appropriate medical facts regarding the condition;~~

~~(4) A statement that the leave is needed to care for the child, spouse, or parent, and an estimate of the amount of time that is needed; or that the employee is unable to perform the functions of the position, whichever applies; and~~

~~(5) Where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment.~~

(c) ~~Where the agency has reason to doubt the validity of the certification, the agency may require the employee to get the opinion of a second doctor designated or approved by the agency. Where the second opinion differs from the opinion in the original certification provided, the agency may require the employee to get the opinion of a third doctor designated or approved jointly by the employer and the employee. The third opinion is final and is binding on the agency and the employee. The agency may require that the employee get subsequent recertifications on a reasonable basis. The second and third certification and the recertifications must be at the agency's expense.~~ Certification - The employee shall provide certification in accordance with the provisions set out in Rule 25 NCAC 1E .1408 of this Section. If the employee does not provide medical certification, any leave taken is not family and medical leave.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1408 CERTIFICATION EMPLOYMENT AND BENEFITS PROTECTION

(a) ~~Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the employer on the employee's status and intention to return to work. The agency also may require that the employee receive certification that the employee is able to return to work.~~ Adoption - The agency may require that a claim for leave because of adoption be supported by reasonable proof of adoption.

(b) ~~Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.~~ Medical Certification - The agency may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a certification from the health care provider; however, if the employee is using paid leave, the agency cannot require a more stringent certification than normally required. If the employee is using unpaid family and medical leave, the certification requirements can be no greater than the following:

(1) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins.

(2) When it is not possible to provide the medical certification before the leave begins, the employee must provide the requested certification to the agency with the time frame requested by the agency (which must allow at least 15 calendar days after the agency's request), unless it is not practicable under the circumstances.

(3) At the time the agency requests certification, the agency must also advise the employee of the anticipated consequences of an employee's failure to provide adequate certification. The agency shall so provide the employee a reasonable opportunity to correct any incomplete information.

(c) ~~Health Benefits - The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave must continue to be paid by the employee during the leave period. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. If the employee's failure to make the premium payments leads to a lapse in coverage, the employer must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting~~

~~period or preexisting conditions. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.~~ Medical Certification Form - Form WH-380, is an optional form that was developed by the Department of Labor for use in obtaining medical certification, including second and third opinions. Another form containing the same basic information may be used; however, no information in addition to that requested on Form WH-380 may be required.

(d) Validity of the Certification.

(1) If an employee submits a complete certification signed by the health care provider, the agency may not request additional information; however, a health care provider representing the agency may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

(2) An agency who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the agency's expense. Pending receipt of the second (or third) opinion the employee is provisionally entitled to family and medical leave. If the certifications do not ultimately establish the employee's entitlement to family and medical leave, the leave shall not be designated as family and medical leave. The agency is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the agency unless the agency is located in an area where access to health care is extremely limited.

(3) If the opinions of the employee's and the agency's designated health care providers differ, the agency may require the employee to obtain certification from a third health care provider, again at the agency's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the agency and the employee.

(4) The agency must reimburse an employee or family for reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The agency may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstances.

(5) The agency is required to provide the employee, within two business days, with a copy of the second and third medical opinions, where application, upon request by the employee.

(e) Recertification of Medical Conditions.

(1) An agency may request recertification no more often than every 30 days unless:

(A) an extension is requested,

(B) circumstances described by the previous certification have changed significantly, or

(C) the agency receives information that casts doubt upon the employee's stated reason for the absence.

(2) If the minimum duration specified on a certification is more than 30 days, the agency may not request recertification until that minimum duration has passed unless one of the conditions in Paragraph (e)(1)(A),(B) or (C) of this Rule is met.

(3) The employee must provide the requested recertification to the agency within the time frame requested by the agency (which must allow at least 15 calendar days after the agency's request), unless it is not practicable under the particular circumstances.

(4) Any recertification requested by the agency shall be at the employee's expense unless the agency provides otherwise. No second or third opinion on recertification may be required.

Statutory Authority G.S.126-4(5); P.L. 103-3.

.1409 EMPLOYMENT AND BENEFITS PROTECTION

(a) ~~Actions Prohibited - It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.~~ Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the agency on the employee's status and intention to return to work. The agency also may require that the employee provide certification that the employee is able to return to work.

(b) ~~Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:~~ Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.

~~(1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;~~

~~(2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or~~

~~(3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.~~

(c) ~~A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. 126). Violations can result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor:~~ Health Benefits - The

State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave must continue to be paid by the employee during the leave period. The agency must give advance written notice to employees of the terms for payment of premiums during family and medical leave. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. The agency must provide 15 days notice that coverage will cease. If the employee's failure to make the premium payments leads to a lapse in coverage, the agency must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or preexisting conditions. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

~~(1) U.S. Department of Labor investigation; or~~

~~(2) Civil liability with the imposition of court cost and attorney's fees; or~~

~~(3) Administrative action by the U.S. Department of Labor.~~

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1409 EMPLOYMENT AND BENEFITS PROTECTION

(a) ~~Actions Prohibited - It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.~~ Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the agency on the employee's status and intention to return to work. The agency also may require that the employee provide certification that the employee is able to return to work.

(b) ~~Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:~~ Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.

~~(1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;~~

~~(2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or~~

~~(3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.~~

(c) ~~A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. 126). Violations can result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor:~~ Health Benefits - The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave must continue to be paid by the employee during the leave period. The agency must give advance written notice to employees of the terms for payment of premiums during family and medical leave. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. The agency must provide 15 days notice that coverage will cease. If the employee's failure to make the premium payments leads to a lapse in coverage, the agency must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or preexisting conditions. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

~~(1) U.S. Department of Labor investigation; or~~

~~(2) Civil liability with the imposition of court cost and attorney's fees; or~~

~~(3) Administrative action by the U.S. Department of Labor.~~

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1410 INTERFERENCE WITH RIGHTS

(a) Actions Prohibited - It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.

(b) Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

(1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;

(2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or

(3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.

(c) A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case

and creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. 126). Violations can result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor:

(1) U.S. Department of Labor investigation; or
(2) Civil liability with the imposition of court cost and attorney's fees; or
(3) Administrative action by the U.S. Department of Labor.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1411 RECORDKEEPING REQUIREMENTS

(a) Agencies are required to keep records for no less than three years and make them available to the Department of Labor upon request. In addition to the records required by the Fair Labor Standards Act. the agency must keep records of:

(1) dates family and medical leave is taken,
(2) hours of leave if less than a full day,
(3) copies of employee notices,
(4) documents describing employee benefits,
(5) premium payments of employee benefits, and
(6) records of any disputes.

(b) Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of family and medical leave, shall b maintained as confidential medical records in separate files/records from the usual personnel files, and if the American With Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatments; and
(3) Government officials investigating compliance with the Family and Medical Leave Act (or other pertinent law) shall be provided relevant information upon request.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

.0604 JUST CAUSE FOR DISCIPLINARY ACTION

(a) Any employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against career employees as defined at G.S. ~~126-1A~~ 126-1.1 and 126-39, only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

(1) Written warning;
(2) Disciplinary suspension without pay;
(3) Demotion; and
(4) Dismissal.

(b) There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in G.S. 126-35. These two bases are:

(1) Discipline or dismissal imposed on the basis of ~~unacceptable~~ unsatisfactory job performance, including grossly inefficient job performance.
(2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

~~(c) The term "unacceptable job performance" means the failure to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by management of the work unit or agency. Satisfactory performance is that performance which is reasonable under all the circumstances. Determination of satisfactory performance shall be made by the supervisor, there is a presumption that the determination is proper and factually supported~~

~~(d) The term "unacceptable personal conduct" is defined as:~~

~~(1) conduct for which no reasonable person should expect to receive prior warnings;~~
~~(2) job related conduct which constitutes a violation of state or federal laws;~~
~~(3) conviction of a felony or an offense involving moral turpitude;~~
~~(4) or the willful violation of know or written work rules;~~
~~(5) conduct unbecoming a state employee that is detrimental to state service.~~

(c) ~~(e)~~ Either ~~unacceptable~~ unsatisfactory or grossly inefficient job performance or unacceptable personal conduct as defined in 25 NCAC 1J. 0614 of this Section constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

(d) The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

Statutory Authority G.S. 126-1.1; 126-35.

.0605 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

(a) In administering this ~~policy~~ Section, supervisors should be aware that, in part, the intent of this ~~policy~~ Section is to assist and promote improved employee performance, rather than to punish. This category covers all types of performance-related inadequacies. This ~~policy~~ Section does not require that ~~progressive warnings~~ successive disciplinary actions all concern the same type of unsatisfactory performance. ~~Warnings~~ Disciplinary actions related to personal conduct may be included in the

~~progressive~~ successive system for performance-related dismissal provided that the employee receives at least the number of ~~warnings~~ disciplinary actions, regardless of the basis of the ~~warnings~~ disciplinary actions, required for dismissal on the basis of inadequate performance. ~~Warnings~~ Disciplinary actions administered under this ~~policy~~ Section are intended to bring about a permanent improvement in job performance; should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance ~~at the next level of discipline~~ with further disciplinary action.

(b) In order to be dismissed for a current incident of unsatisfactory job performance an employee must first ~~Employees who are dismissed for unsatisfactory job performance shall~~ receive at least ~~three warnings~~ two prior disciplinary actions: First, one or more ~~oral~~ written warnings; ~~second, a written warning to the employee documenting all relevant points covered in the disciplinary discussion; third, a final written warning~~ followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(c) Prior to the decision to dismiss an employee, a management representative must conduct a pre-dismissal conference with the employee in accordance with the procedural requirements of this Section. ~~In administering this policy, supervisors should be aware that, in part, the intent of this policy is to assist and promote improved employee performance, rather than to punish.~~

~~(1) Oral Warning.~~

~~(A) The supervisor is responsible for assuring the satisfactory performance work assigned to his unit. When, in the judgment of the supervisor, unsatisfactory performance occurs, then use of the disciplinary process may be appropriate.~~

~~(B) In a private discussion with the employee, the supervisor shall do the following:~~

~~(i) Inform the employee that this is a warning, and not some other non-disciplinary process such as counseling;~~

~~(ii) Inform the employee of the specific performance deficiencies that are the basis for the warning;~~

~~(iii) Tell the employee what specific improvements must be made to correct the unsatisfactory performance;~~

~~(iv) Let the employee know what time is being allowed to make the required improvements;~~

~~(v) Tell the employee of the consequences of failing to make the required improvements.~~

~~Note: It is a recommended personnel practice to allow the employee to respond to the specific reasons for the warning. In some cases this may affect the supervisor's decision on whether to discipline an employee. Supervisors should also record the date and specifics of the warning for possible future use.~~

~~(2) Written warning. In a private meeting with the employee the supervisor shall:~~

~~(A) Conduct a disciplinary conference with the employee; this disciplinary conference should follow the same steps as set forth for an oral warning;~~

~~(B) Tell the employee he will receive a written warning covering all significant points of this conference;~~

~~(C) Prepare and send to the employee a written warning covering all significant points of the disciplinary conference; care should be taken to include the specific reasons for the warning.~~

~~Note: Reference may be made in this warning to document an earlier oral warning.~~

~~(3) Final Written Warning.~~

~~(A) Before issuing the final written warning, the supervisor and appropriate agency management should review the contents of the warning. The following steps shall be taken in issuing a final written warning:~~

~~(i) Prepare a final written warning to the employee; care should be taken to include the specific reasons for the warning;~~

~~(ii) In private, conduct a disciplinary conference with the employee; at this conference, the specific reason for the action, the necessary improvements and the time allowed to make improvements should be discussed;~~

~~(iii) Present the warning to the employee at the end of the conference; the employee should be informed, either orally or in the warning, that failure to correct the unsatisfactory performance may result in dismissal.~~

~~(B) During the period after a final written warning has been given, management, in its discretion, may choose to counsel with the employee concerning his employment status before a decision to dismiss is made. Such counseling should involve a discussion of the necessity for the employee's commitment to improve performance. As a part of this counseling, management may request the employee to take up to a day's leave with pay to consider whether or not the employee wishes to continue his employment with the agency. This time away from the job site shall not be charged to the employee's vacation or sick leave; it shall be considered as the employee's assignment for that time not at the normal job site. It should be stressed to the employee that a decision to continue employment with the agency will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Clearly, such a procedure is not suitable in all situations; management is expected to use its discretion to determine where such a procedure would benefit the employee and the agency.~~

(d) Notice. An employee who is dismissed must receive written notice of the specific reasons for the dismissal, as well as notice of any applicable appeal rights.

(e) Dismissals for unsatisfactory job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a predismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Statutory Authority G.S. 126-4; 126-35.

.0606 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

~~Before an employee may be dismissed, the following shall occur:~~

~~(1) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The purpose of the pre-dismissal conference is to review the recommendation with the affected employee and by listening to and considering information put forth by the employee, to insure that such a significant personnel action is not based on mistaken or erroneous information and conclusions.~~

~~(2) The Supervisor or designated management representative shall schedule and conduct a pre-dismissal conference with the employee. Advance notice of the pre-dismissal conference must be given to the employee. A second management representative or security personnel may be present at management's discretion. No attorneys representing either side may attend the conference. In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments to support his position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any information in his possession in opposition to his dismissal prior to the end of the conference.~~

~~(3) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal shall be prepared containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should normally not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-dismissal conference. The employee shall be informed of the decision and furnished, either in person or by mail, a copy of the letter of dismissal, receipt of which shall constitute dismissal. A management decision not to dismiss the employee may be communicated to the employee at any time following the conclusion of the conference.~~

~~(4) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A permanent employee who is dismissed for unsatisfactory job performance may at management's discretion be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.~~

(a) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(b) Prior to dismissal of a career employee on the basis of grossly inefficient job performance, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J. 0613.

(c) Dismissals for grossly inefficient job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(d) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a predismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Statutory Authority G.S. 126-4(7a).

.0608 DISMISSAL: FOR PERSONAL CONDUCT

(a) Employees may be dismissed for a current incident of unacceptable personal conduct. ~~dismissed, demoted, suspended or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal~~ without any prior disciplinary action ~~warning to the employee~~. ~~Oral or written warnings given for unacceptable personal conduct according to this Rule cannot be used to shorten the progressive warning process~~

~~required to dismiss an employee on the basis of unsatisfactory job performance.~~

(b) ~~Disciplinary demotions, suspensions or dismissals for personal conduct require written notification to the employee. Such notification must include specific reasons for the discipline and notice of the employee's right of appeal.~~ Prior to dismissal of a career employee on the basis of unacceptable personal conduct, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J .0613.

(c) ~~Prior to dismissal of a career employee on the basis of personal conduct, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J.0606(2), (3).~~ Dismissals for unacceptable personal conduct require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(d) ~~Note:~~ Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a predismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432 ~~shall cause the dismissal to be legally ineffective, and may require backpay and attorney's fees to be paid to the employee~~. Time limits for filing a grievance do not start until the employee receives written notice of ~~his/her~~ any applicable appeal rights.

Statutory Authority G.S. 126-1A; 126-4; 126-35.

.0610 WRITTEN WARNING

~~Investigatory disciplinary suspension may be used by management in appropriate circumstances. However, the following provisions shall control its use:~~

~~(1) An employee who has been suspended for either investigatory or disciplinary reasons must be placed on compulsory leave of absence without pay.~~

~~(2) Investigatory suspension without pay may be used to provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision. Investigatory suspension without pay may be appropriately used to provide time to schedule and hold a pre-dismissal conference. Also, management may elect to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed 45 calendar days. However, a department or university may, in the exercise of its discretion, extend the period of investigatory suspension without pay beyond the 45 day limit. The employee must be informed in writing of the extension, the length of the extension, the specific reasons for the extension and his right of appeal. If no action has been taken by management by the end of 45 calendar days, and no extension has been made, one of the following must occur. Reinstatement of the employee with full backpay, appropriate disciplinary action based on the results of the investigation; reinstatement of the employee with up to three days pay deducted from the backpay.~~

~~(3) Investigatory suspension of an employee shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.~~

~~(4) An employee who has been suspended for investigatory reasons may be reinstated with up to three days pay deducted from his salary. Such determination is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay and must be effected in accordance with Paragraphs (5) and (6) of this Rule.~~

~~(5) An employee may be suspended without pay for disciplinary purposes for causes relating to any form of personal conduct or in conjunction with a final written warning for performance of duties. However, a disciplinary suspension without pay must be for at least one full working day, but not more than three working days. Prior to placing any employee on disciplinary suspension without pay, a management representative shall conduct a pre-suspension conference with the employee. This conference shall be carried out in the same fashion as a pre-dismissal conference.~~

~~(6) An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights. A pre-suspension conference is required only when the employee is suspended without pay for disciplinary reasons; a pre-suspension conference is not required where an employee is suspended without pay for the purpose of investigation.~~

(a) The supervisor is responsible for assuring the satisfactory performance of work assignments and that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies can constitute unsatisfactory job performance under this Section. Unacceptable personal conduct can be work-related and non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The following procedure must be followed to issue a written warning.

(b) In a private discussion with the employee, the supervisor shall do the following:

(1) Inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;

(2) Inform the employee of the specific issues that are the basis for the warning;

(3) Tell the employee what specific improvements if applicable must be made to address these specific issues;

(4) Tell the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;

(5) Tell the employee the consequences of failing to make the required improvements/corrections;

(6) Issue the employee a written warning in accordance with the procedural requirements of this Section, including any applicable appeal rights.

Statutory Authority G.S. 126-4.

.0611 DISCIPLINARY SUSPENSION WITHOUT PAY

~~(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory job performance or unacceptable personal conduct.~~

~~(1) Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least two prior warnings on his performance. At least one of the warnings prior to demotion must be in writing.~~

~~(2) Personal Conduct. An employee may be demoted for unacceptable conduct without any prior warning. Cause for demotion on the basis of personal conduct does not have to be as serious as cause for dismissal.~~

~~(3) Notice. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of his appeal rights.~~

~~(b) Disciplinary demotions may be accomplished in several ways. The employee may be demoted to a lower classification with or without a loss in pay. Or, the employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his current pay grade, unless the employee is demoted to a lower classification. Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee. This pre-demotion conference shall be accomplished in the same fashion as the pre-dismissal conference.~~

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks. The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without pay, a management representative shall conduct a pre-suspension conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA.

Statutory Authority G.S. 126-4(6); 126-35.

.0612 DEMOTION

(a) ~~By statute, some duties assigned to positions in the state service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.~~ Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

(1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.

(2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.

(3) Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

(4) Notice. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

(b) ~~Employees in such classifications are responsible for maintaining current, valid credentials as required by law. Failure to maintain the required credentials is a basis for immediate dismissal without prior warning. An employee who is dismissed shall be given a written statement of the reason for the action and his appeal rights.~~ Disciplinary demotions may be accomplished in three ways:

(1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary schedule for the new lower pay grade;

(2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the salary rate does not exceed the maximum of the salary schedule for the new lower pay grade; or

(3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade or the special entry rate, if in effect.

(c) Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee in accordance with the procedural requirements of this Section.

Statutory Authority G.S. 126-4(3).

.0613 PROCEDURAL REQUIREMENTS

The following procedural requirements must be followed to issue disciplinary action under this Section:

(1) WRITTEN WARNING - to issue a written warning to an employee, a supervisor must comply with the following procedural requirements:

(a) Conduct a disciplinary conference with the employee during which the employee is told:

(i) That this is a written warning;

(ii) The specific issues that are the basis for the warning;

(iii) What specific improvements must be made;

(iv) The time frame allowed for making the required improvements/corrections. Absent a specified time frame in the warning, 60 days is the time frame allowed for unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and

(v) The consequences of failing to make the required improvements/corrections.

(b) Issue the employee a written warning, detailing the matters referenced in Sub-item (a)(i) - (v) of this Rule and including any applicable appeal rights.

(2) DISCIPLINARY SUSPENSION WITHOUT PAY - to place an employee on disciplinary suspension without pay, a supervisor must comply with the following procedural requirements:

(a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct there are no pre-conditions so an employee may be suspended without pay for a current incident of grossly inefficient performance or unacceptable misconduct;

(b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the appropriate pre-disciplinary conference must be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice should be as much as is practical under the circumstances;

(c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;

(d) Advise the employee of any applicable appeal rights in the document effecting the suspension.

(3) DEMOTION - to demote an employee, a supervisor must comply with the following procedural requirements:

(a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action.

(b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;

(c) Advance oral or written notice of the appropriate pre-disciplinary conference must be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice should be as much as is practical under the circumstances.

(d) An employee who is demoted must receive written notice of the specific acts or omissions that are the reasons for the demotion;

(e) An employee must be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and

(f) The employee must also be advised of any applicable appeal rights in the document effecting the demotion.

(4) DISMISSAL - to dismiss an employee, a supervisor must comply with the following procedural requirements:

Before an employee may be dismissed, the following shall occur:

(a) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference must have the authority to recommend or to decide what, if any disciplinary action should be imposed on the employee.

(b) The Supervisor or designated management representative shall schedule a pre-dismissal conference with the employee.

(c) Advance written notice of the pre-dismissal conference must be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice should be as much as is practical under the circum-

stances.

(d) The Supervisor or designated management representative shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference. The purpose of the pre-dismissal conference is to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference.

(e) In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity does not include the right to present witnesses.

(f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference.

(g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A career employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.

Statutory Authority G.S. 126-4; 126-35.

.0614 DEFINITIONS

(a) Current Unresolved Incident - Conduct or performance that:

(1) constitutes a violation of this Section; and

(2) for which no disciplinary action has been previously imposed or issued by agency/university management.

(b) Disciplinary Demotion - A personnel action taken, without employee agreement, to discipline the employee, which results in:

(1) reduction in salary within the employee's current classification; or

(2) an assignment to a position in a lower salary grade without a corresponding loss of salary; or

(3) an assignment to a position in a lower salary grade with a corresponding loss of salary.

(c) Disciplinary Suspension Without Pay - The removal of an employee from work for disciplinary purposes without paying the employee.

(e) Dismissal - The involuntary termination or ending of the employment of an employee for disciplinary purposes or failure to obtain or maintain necessary credentials.

(f) Gross Inefficiency (Grossly Inefficient Job Performance) - A type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in:

(1) the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or

(2) the loss of or damage to state property or funds that result in a serious impact on the State and/or work unit.

(g) Inactive Disciplinary Action - Any disciplinary action issued after the effective date of this Section, is deemed inactive for the purpose of this Section in the event that:

(1) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or

(2) the purpose for a performance-based disciplinary action has been achieved, as evidenced by a summary performance rating of level 3 (Good) or better and at least a level 3 or better in the performance area cited in the warning or disciplinary

action, following the disciplinary warning or action; or

(3) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months and the agency/university has not, prior to the expiration of the 18 month period, issued to the employee notice of the extension of the period.

(h) Insubordination - The willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

(i) Unacceptable Personal Conduct is:

(1) conduct for which no reasonable person should expect to receive prior warning; or

(2) job-related conduct which constitutes a violation of state or federal; or

(3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State; or

(4) the willful violation of known or written work rules; or

(5) conduct unbecoming a state employee that is detrimental to state service; or

(6) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State; or

(7) absence from work after all authorized leave credits and benefits have been exhausted; or

(8) falsification of a state application or in other employment documentation.

(j) Unsatisfactory Job Performance - Work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.

Statutory Authority G.S. 126-4; 126-35.

.0615 SPECIAL PROVISIONS

(a) GRANDFATHER PROVISIONS - The following Grandfather provisions establish the force and effect of disciplinary actions in existence upon the effective date of this Section.

(1) Oral warnings - any oral warning existing upon the effective date of this Section is deemed void and has no further force or effect upon the disciplinary status of any state employee.

(2) All other disciplinary actions existing at the time this Section is adopted shall remain in full force and effect as if the warnings or other disciplinary actions had been imposed under this Section. No written warning or other disciplinary action imposed prior to the effective date of this Section shall be deemed inactive by operation of the provisions of this Section until more than 18 months after the effective date of this Section, or until the disciplinary action is deemed inactive in accordance with 25 NCAC 1J .0614(g), whichever occurs first.

(3) Extension of Disciplinary Actions - any written warning or disciplinary action imposed prior to the adoption of this Section may be extended in accordance with the provisions of this Section as if the warning or disciplinary action had been imposed after the effective date of the Section. No unresolved written warning or disciplinary action issued under the prior Section shall become inactive if, within 18 months of the effective date of this Section, another disciplinary action or warning is imposed on the employee. Notice of the extension of the active status of a disciplinary action can be given at any time within 18 months of the effective date of the disciplinary action.

(4) Resolution of disciplinary actions under prior agency/university procedure - any warnings or disciplinary actions existing at the time that this Section is adopted shall be deemed inactive if it would have been resolved under the an agency/university procedure existing at the time of the adoption of this Section.

(b) PLACEMENT ON INVESTIGATION - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the agency/university head and the State Personnel Director. When an extension beyond the thirty-day period is required, the agency/university must advise the employee in writing of the extension, the length the extension, and the specific reasons for the extension. If no action has been taken by an agency/university by the end of the 30-day period and no further extension has been granted, the agency/university must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstance is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

It is permissible to place an employee in investigation status with pay only under the following circumstances:

(1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;

(2) To provide time within which to schedule and conduct a pre-disciplinary conference; or

(3) To avoid disruption of the work place and/or to protect the safety of persons or property.

(c) CREDENTIALS - By statute, regulation, and administrative rule, some duties assigned to positions in the state service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.

(1) Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law, rule or regulation. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency/university, disciplinary action shall be administered as follows:

(A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 1J .0608.

(B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

(C) When credential or work history falsification is discovered before employment with a state agency/university, the applicant shall be disqualified from consideration for the position in question.

(d) OTHER SPECIAL PROVISIONS -

(1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

(2) Warnings, extensions of disciplinary actions and periods of placement on investigation, and placement on investigation with pay are not grieveable unless an agency/university specifically provides for such a grievance in its agency/university grievance procedure. Absent an allegation of a violation of G.S. 126-16, 126-25, or 126-36, warnings are not appealable to the State Personnel Commission.

(3) An agency/university shall furnish to an employee as an attachment to the written documentation of any grieveable disciplinary action, a copy of the agency/university grievance procedure.

(4) Each agency and university shall adopt and submit for State Personnel Commission approval an internal grievance procedure that shall:

(A) Setforth the manner and mechanism with which employees are notified of changes in agency/university policy and State Personnel Commission regulations;

(B) Set out the policy on the use of disciplinary suspension and the procedure for the issuance of warnings;

(C) Set out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and

(D) Set out the policy on how an employee may access the employee's personnel file.

(5) Each agency and university shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter in a form prescribed by the OSP.

(6) Each agency and university shall insure that designated personnel are trained in the administration of this Section.

Statutory Authority G.S. 126-4; 126-35.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

DEPARTMENT OF AGRICULTURE

Markets

2 NCAC 43L .0202 - Gate Fees	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
2 NCAC 43L .0304 - Horse Facility	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*

DEPARTMENT OF COMMERCE

Banking Commission

4 NCAC 3C .0201 - Establishment of Branches and Limited Service Facilities	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .0202 - Discontinuance	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .0204 - Conversion of Branch to Limited Service Facility	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .0301 - Change of Location of Main Office, Branch or Ltd Svc Facility	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .0901 - Books and Records	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .1001 - Loan Documentation	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .1101 - Definitions: Issuance of Capital Notes and Debentures	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .1302 - Share Purchase and Option Plans	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
4 NCAC 3C .1601 - Fees, Copies and Publication Costs	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*

DEPARTMENT OF COMMUNITY COLLEGES

Community Colleges

23 NCAC 2C .0604 - Program Review	*RRC Objection*	*06/14/95*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	*Obj. Cont'd*	*05/18/95*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***06/27/95***
15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas	*RRC Objection*	*03/16/95*
Agency Revised Rule	*Obj. Cont'd*	*04/20/95*
Rule Returned to Agency		*04/20/95*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***05/04/95***
15A NCAC 7M .0202 - Policy Statements	*RRC Objection*	*03/16/95*
Rule Returned to Agency	*Obj. Cont'd*	*04/20/95*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***05/04/95***

Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	*RRC Objection*	*06/14/95*

HUMAN RESOURCES

Facility Services

10 NCAC 3O .0305 - Persons Subject to Licensure	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0607 - License Year	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*

Medical Assistance

10 NCAC 26H .0104 - Cost Reporting: Auditing and Settlements		
Rule Withdrawn by Agency		*04/20/95*
Agency Resubmitted Rule	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 26M .0301 - Program Definition	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 26M .0302 - Access to Care	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 26M .0303 - Patient Informing	*RRC Objection*	*04/20/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 26M .0304 - Relationship with Carolina Access	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Rule Withdrawn by Agency		*05/18/95*
10 NCAC 26M .0305 - Relationship with EPSDT program	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Rule Withdrawn by Agency		*05/18/95*
10 NCAC 26M .0306 - Relationship with Sub-Contractors (Renumbered to .0304)	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 26M .0307 - Utilization Review Requirements	*RRC Objection*	*04/20/95*
Agency Revised Rule	*RRC Objection*	*04/20/95*
Rule Withdrawn by Agency		*05/18/95*
10 NCAC 26M .0308 - Enrollee and Sub-Contractor Appeals and Grievances	*RRC Objection*	*04/20/95*
Agency Revised Rule (Renumbered to .0305)	*Obj. Removed*	*05/18/95*

LABOR

OSHA

13 NCAC 7A .0602 - Definitions	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
13 NCAC 7A .0603 - Safety and Health Programs	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*

LICENSING BOARDS AND COMMISSIONS

Board of Cosmetic Art Examiners

21 NCAC 14F .0014 - Salon Renewal	*RRC Objection*	*03/16/95*
No Response from Agency	*Obj. Cont'd*	*04/20/95*

Agency Revised Rule	*Obj. Removed*		*05/18/95*
21 NCAC 141 .0401 - App. for Lic. by Individuals Who Have Been Convicted of a Felony	*RRC Objection*		*03/16/95*
No Response from Agency	*Obj. Cont'd*		*04/20/95*
Agency Revised Rule	*Obj. Removed*		*05/18/95*
21 NCAC 141 .0402 - Requests for Preapplication Review of Felony Convictions	*RRC Objection*		*03/16/95*
No Response from Agency	*Obj. Cont'd*		*04/20/95*
Agency Revised Rule	*Obj. Removed*		*05/18/95*

Board of Practicing Psychologists

21 NCAC 54 .2704 - HSP-P Requirements On and After June 30, 1994	*RRC Objection*		*05/18/95*
Agency Filed Rule for Codification Over RRC Objection		***Eff.***	***06/21/95***
21 NCAC 54 .2705 - HSP-PP Requirements	*RRC Objection*		*05/18/95*
Agency Filed Rule for Codification Over RRC Objection		***Eff.***	***06/21/95***
21 NCAC 54 .2706 - HSP-PA Requirements On and After June 30, 1994	*RRC Objection*		*05/18/95*
Agency Filed Rule for Codification Over RRC Objection		***Eff.***	***06/21/95***

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

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Channie S. Chapman v. Bd/Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 DOA 1565

HOLLAND GROUP, INC., Petitioner,	)	
v.	)	RECOMMENDED DECISION
NORTH CAROLINA DEPARTMENT OF ADMINISTRATION, STATE CONSTRUCTION OFFICE, Respondent.	)	

STATEMENT OF THE CASE

The above-captioned hearing was heard before Administrative Law Judge Dolores O. Nesnow, on April 6 and 7, 1995, in Asheville, North Carolina.

APPEARANCES

Petitioner: Holland Group, Inc.
Reginald B. Holland, Jr.
Pro se.

Respondent: David Steinbock
Assistant Attorney General
N.C. Department of Justice
Attorney for Respondent.

ISSUES

1. Did Respondent err in assessing Petitioner liquidated damages in the amount of $15,200?

2. Does the Respondent owe the Petitioner $20,816 in Extended Field Overhead?

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 143-135 *et seq.*

STIPULATION AGREEMENTS

The previously noted issues of "Change Orders" and "Retainage" are not issues for purposes of this hearing.

FINDINGS OF FACT

1. In 1992, as part of the Governor's Correction Program, the Division of Youth Services of the North Carolina Department of Human Resources was mandated to construct six secure/non-secure youth homes across the state.

2. An architect was retained to design and oversee the construction of the group homes. The architect was Steven Schuster, who operates his own company, Clearscapes, out of Raleigh, North Carolina.

3. The group homes were to be six identical buildings to be used for the purpose of offering a residential setting to troubled youths, both in a secure and non-secure setting.

4. It was determined that it would be in the interest of the success of the projects to have local contractors working on each of the homes so that the community might develop an "ownership" interest in each of the homes.

5. The Division of Youth Services (Owner) and the architect, Mr. Schuster, consulted concerning the terms which were to be included as part of the contracts. One of the terms was a time frame within which each of the homes could be built.

6. Mr. Schuster determined that each of the homes could be built in a total of 135 days.

7. Another term of the contract was liquidated damages. Liquidated damages are assessed against a contractor for each day beyond the contract completion time. In the instant case, the Petitioner could be assessed a two hundred dollar ($200.00) per day "liquidated damages" penalty.

8. Petitioner was the successful bidder for the home to be built in Macon County.

9. On the Macon County Home, the Petitioner was a single prime contractor, i.e. the one contractor in charge of the project. On the other homes there were multi-prime contractors, i.e. a number of contractors each responsible directly to the architect and owner for their own part of the project.

10. At the end of the Macon County Project, the Petitioner had gone 85 days beyond the 135-day completion time.

11. Petitioner was assessed a total of $15,200.

12. Petitioner made no money on the Macon County Home.

13. Mr. Schuster testified that liquidated damages are not a penalty but they are the amount of "out-of-pocket costs" caused to the owner by not having the project completed in a timely manner.

14. After the six homes were built, the Petitioner reviewed the time expended in the construction of each of the six homes. The results were as follows:

Macon County Home:	220 days
Hertford County Home:	225 days
Wayne County Home:	227 days
Robeson County Home:	241 days
Craven County Home:	246 days
Chowan County Home:	265 days

15. The average time in building these homes is 237 days.

16. Petitioner was told all through his project that he was the slowest contractor of the six houses which were built. When he was able to gather information and put together a record, he learned that he had completed the project in the shortest amount of time.

17. During construction projects, contractors often request of the architect what are known as "rain days." These are days during which the weather has prevented construction. The contractor requests that these days not be added on to the time taken to complete the project.

18. Petitioner requested a number of "rain days," almost all of which the architect allowed. However, Petitioner in fact requested rain days only for those days which Mr. Schuster told him in advance would be allowed.

19. After the project began, Petitioner made a schedule and realized that 135 days was not going to be enough time. He called Clearscapes, Mr. Schuster's company, and was told that they believed the 135 days to be attainable.

20. The Petitioner testified that early into the project he became more concerned that the weather was preventing construction and that he would be assessed liquidated damages. He spoke with Mr. Schuster and articulated his concern. Mr. Schuster said, "Don't worry about liquidated damages. I will take care of them. Just keep the quality of the work high."

21. Petitioner testified that Mr. Schuster said this to him on several occasions.

22. Mr. Schuster conceded that he had said this to Petitioner on at least one occasion and probably more. He testified that he does remember saying, "The important thing is to get the job done and keep the quality high. Don't worry about liquidated damages. The State is not in the business of punishing people." He testified, however, that at a meeting subsequent to that he made it clear to Mr. Holland and his subcontractors that they didn't have "all the time in the world."

23. Mr. Schuster testified that he did not mean to indicate that he would eliminate the possibility of liquidated damages but only that he wanted the construction to continue with a high quality and that Petitioner should not be concerned with rain days which would more than likely be credited to him.

24. Petitioner understood Mr. Schuster's assurance to be an indication that liquidated damages would not be strictly enforced as long as the Petitioner kept the quality high and continued to work at his best speed.

25. At construction meetings with Petitioner's crew, Mr. Schuster said on a number of occasions that the job had to be done and that there was always the spectra of liquidated damages.

26. Petitioner, however, understood those comments to be public comments for the purposes of encouraging the crews and the subcontractors to continue to work expeditiously.

27. Petitioner testified that he did not tell his subcontractors about his private conversations with Mr. Schuster because he felt they should be urged to continue to work as quickly as possible.

28. Petitioner believes he "upheld his end of the bargain" and the Respondent did not.

29. Mr. Schuster testified that he agrees that 135 days was an "aggressive" estimate. He said, "There's no question about that." He testified, however, that it was his opinion that the 135 days was "attainable."

30. Robert L. Deaver, the owner of Ross-Markham, Inc., Construction Company was the successful bidder for three of the youth homes. Mr. Deaver testified that during the construction period he enjoyed working with Mr. Schuster but when the construction was finished he was assessed a very high amount of liquidated damages which hurt his company financially.

31. Mr. Deaver testified that 135 days was not enough time to complete the projects.

32. Earlier, Mr. Schuster had told Mr. Deaver that he agreed that 135 days was not enough time but that he had not had any input into the 135 days. Mr. Schuster told Mr. Deaver that the 135 days were set by David Flaherty, the then Secretary of the Department of Human Resources.

33. Mr. Deaver was very concerned about liquidated damages when he realized that the projects were not going to be completed in the time allotted.

34. Mr. Schuster told Mr. Deaver that he would not be charged liquidated damages according to the contract, but that he would be charged a lesser amount.

35. At approximately the time the projects were complete, Mr. Schuster told Mr. Deaver that he would be charged about $5,000 per building in liquidated damages. Mr. Deaver responded that since the State owed him $20,000 for change orders which had never been paid, they could "call it even." Mr. Schuster responded negatively and said that Mr. Deaver would have to absorb the $20,000 for change order work and also pay the $15,000 in liquidated damages.

36. Mr. Deaver returned to his office and considered this, after which he called Mr. Schuster and said it was financially impossible. Mr. Schuster said he would see what he could do.

37. Mr. Schuster subsequently responded to Mr. Deaver that the State had said "No" and that Mr. Deaver would have

to absorb approximately "fifty to sixty thousand dollars."

38. Mr. Deaver has done approximately 150 projects in his career and was assessed liquidated damages in four or five of them.

39. Mr. Deaver testified that the "designer" of the project usually sets the correct amount of time for the completion of a project. He testified that contractors rely on the time set by the designer as being a reasonable estimate for the length of the project.

40. Mr. Deaver did not make any money on the homes he built.

41. Patrick Joyce is the Executive Vice President of L.A. Downey and Son General Contractors. Mr. Downey testified that his company built two of the youth homes in Chowan and Hertford Counties.

42. Mr. Joyce testified that Mr. Schuster told him the 135 days was not Mr. Schuster's idea -- that Mr. Schuster wanted a longer time. Mr. Joyce also testified that Mr. Schuster said it was a very, very aggressive schedule.

43. Mr. Joyce also testified that at the time the contracts were let for bids he believed that 135 days to completion was almost impossible. However, at that time, the weather was good, Mr. Joyce needed the work and believed that there was a possibility that he might just be able to do it.

44. Mr. Joyce testified that the vaulted ceilings and the security screens which were placed into the house were very expensive and that he never recovered that money from the State.

45. At the end of his project Mr. Joyce also received an assessment of liquidated damages. He attempted to negotiate those liquidated damages but testified that he was "disappointed" with those negotiations.

46. Mr. Joyce also testified that his two projects were "multi-prime" projects and that one of the prime contractors had signed a settlement concerning liquidated damages.

47. Mr. Joyce testified that in all the projects he did, he was assessed liquidated damages one time. That time was $5,000 from the federal government and the amount was negotiated out.

48. Petitioner testified that, from a general contractor's point of view, the quicker the job the more money the contractor makes. He also testified that he spent a lot of his own money to keep the project moving.

49. Petitioner was told by the State to bill the State on the 23rd of the month and the State would pay him on the 10th of the following month. Petitioner testified that the State was late on a total of 64 days in paying his submitted bills.

50. Petitioner's subcontractors included people he had worked with on projects before. Alvin Johnson was the masonry subcontractor, Jackie West did the plumbing, Clyde McCall was the electrician, and Carroll Moore did HVAC.

51. Mr. Johnson testified that the "specs" called for six-inch masonry block and four-inch cast iron plumbing pipe. He demonstrated, and it is found as fact, that four-inch cast iron plumbing pipe does not fit into the openings on six-inch masonry block. In order to make those items work together Mr. Johnson had to cut through each masonry block which would be required at a pipe site and place the block around the pipe.

52. Mr. Johnson testified that it is customary for an eight-inch or ten-inch block to be used where four-inch piping is being used.

53. Mr. Johnson had to cut 13 to 27 blocks at each of five locations. Every three days he had to replace the diamond blade on his cutting tool, which blade was valued at $273.00.

54. Mr. Schuster testified that his specs called for six-inch cinder block intentionally as an effort to save money and that he did not feel that the masons would have to do a great deal of work to accommodate the pipes.

55. Mr. Johnson testified that the biggest problem at the Macon County home was the weather. It was winter and the Petitioner expected Mr. Johnson to work nine hour days. Mr. Johnson testified that he believes he did all he could to get his

work done on time.

56. Mr. Johnson further testified that Petitioner called him "every night and told me to get up there" and that he "almost got aggravated" and didn't want to work on Petitioner's jobs any more.

57. Mr. Johnson testified that Ronnie Norton was the masonry subcontractor before Mr. Johnson took over. Mr. Norton laid two corners and one wall, three to four courses high. At that point Mr. Norton quit. Mr. Johnson testified that Mr. Norton probably "figured out the first day what it took me four to five days to figure out."

58. Mr. Johnson made no money on the Macon County Home Project.

59. Jackie West testified that he did the fastest job he could. He testified that "we were walking over workers while we were there" and Petitioner was pushing everyone. Mr. West additionally testified that Petitioner was "calling all the time at night. I almost wanted to take the phone off the hook. I used the 'shower excuse' so much I was ashamed."

60. Mr. West also testified that there were some mistakes in the specs which he had to correct, including sinks which were placed back to back and a soil pipe which was designed to come out on the south side of the building while the sewer connections were on the north side of the building.

61. Mr. McCall testified that he worked as quickly as was possible, that there were always other people on the site, and that once the roof was on "there was a lot of inside traffic."

62. On one occasion, Mr. McCall saw 22 pickup trucks at the site and he had to park quite a way down the road. He arranged to have all of his people ride in one vehicle because the parking was so difficult at the construction site.

63. Mr. Moore testified that he worked as quickly as he could and had an adequate crew for the job.

64. Mr. Moore redesigned the HVAC for the whole building. The plans called for a "12-ton coolant" which was not enough for the building. Mr. Moore testified that the structure which had been designated as "residential" had been incorrectly designated and should have been designated commercial or industrial. If it had been designated as commercial, there would have been more time allotted for its construction

65. Mr. Moore spent time trying to figure out ways to save the State money on the building. He did plans for the changes and he and the Petitioner faxed them to Raleigh. He spent a day or two doing the plans. Mr. Schooley did not ask for any money for this work and he provided the service for free so that job would be "done right."

66. Lyman L. Bryant is an architect who was hired by Mr. Schuster to oversee the construction of the Holland Group Project. He testified that he was the "eyes and ears" of Mr. Schuster and that he was at the project site on numerous occasions. He testified that in the Petitioner's project the State ".... got a very good building."

67. Ed Buckner of the State Construction Office was assigned the task of overseeing the project to see that construction laws were being met. He testified that the house was of "very good quality work."

68. He further testified that he went to the site on two occasions when the "slab" was ready for pouring and it hadn't been poured. It was his opinion, he testified, that it was not too cold to pour.

69. Petitioner testified that the North Carolina Construction Manual which was given to him prohibited pouring concrete when the weather was below a certain temperature.

70. Mr. Buckner testified that on one or two occasions he went by the site and there was nobody working.

71. Petitioner testified that there were times when work on a project has to stop while something "sets," the crew has to wait for an interim inspection, or when one crew has to wait for another crew to come on the site to finish a phase of the project.

72. Mr. Buckner testified that in his opinion the problem with the Petitioner's site was that the Petitioner did not get an aggressive enough start at the beginning of the project.

73. Mr. Buckner also testified that he would not have planned a project which used the eight-inch pipe and the six-inch masonry block combination.

74. When the project was nearing completion, Mr. Schuster wrote to the owner, telling them that the project had gone over the dates predicted and that since his architectural firm had had to incur additional administrative expenses to keep watch on the job, he would be charging the owner for that additional time. That letter also notified the owner that Mr. Schuster would be seeking liquidated damages from the contractor.

75. Mr. Schuster testified that he was aware that the owner did not have any additional money and that it was probable that the only way they would be able to pay his bill for extra time was to collect the liquidated damages.

76. He billed the State $32,976 for additional administrative services. He testified that he "negotiated" this amount with the State. He was in fact paid "in the high 20s or low 30s."

77. Petitioner testified that he had learned that the liquidated damages were going to be paid to Mr. Schuster for his expenses. He determined that if Mr. Schuster could be paid for the work he did beyond 135 days then he, too, should be paid for that time since Mr. Schuster was the designer and as the designer he knew it was impossible to complete in 135 days, which information Mr. Schuster did not share with Petitioner.

78. Mr. Schuster testified that it is his job to be "a fair and impartial mediator between the owner and the contractor when it comes to liquidated damages."

79. Mr. Schuster testified that it was and is his opinion that the schedule was attainable without overtime or double shifts. He testified that a contractor must do whatever he has to do to complete the project on time.

80. Speros Fleggas, Director of the Office of State Construction, DOA, testified that it is within his power to grant Extended Field Overheads if he found a legitimate reason to do so.

81. Mr. Fleggas also testified that these projects were bid twice. The first time they were let for bids the design was too expensive and all the bids came in too high.

82. It is found as fact that the architect set the completion time at 135 days.

83. It is found as fact that Mr. Schuster knew that 135 days was an almost impossible completion time.

84. It is found as fact that Mr. Schuster intentionally misled the Petitioner to believe that liquidated damages would not be assessed if the quality was high.

Based upon the above Findings of Fact, the undersigned makes the following Conclusions of Law:

CONCLUSIONS OF LAW

ISSUE 1: Did Respondent err in assessing Petitioner liquidated damages in the amount of $15,200?

1. In Graham and Son, Inc., v. Board of Education, 25 NC App. 163, 212 S.E. 2d 542 (1975) the North Carolina Court of Appeals discussed the concept of liquidated damages where a contractor had failed to complete a project on time. The Court found that where the delay was caused by the architect, the contractor could not be charged liquidated damages. In that case the architect failed to pay the contractor, failed to provide necessary facilities at the job site, and was otherwise uncooperative with the contractor.

In the case of Barrett, Robert & Woods, Inc., v. ARMI 59 NC App. 134, 296 S.E. 2d. 10 (1982) the Court of Appeals found that there was severe unpredictable weather delays and also numerous instances of interference in the performance of the contract by the architect. The Court determined that the contractor should not be assessed liquidated damages.

In the case at hand, the architect did not do any of the overt acts described in Graham or Barrett. However, in the instant case, the architect did contribute to the lateness of the project by putting a completion time in the contract which he knew was at the very least "very aggressive."

Additionally, Mr. Schuster reassured the Petitioner by stating to him on more than one occasion that he should not be concerned with liquidated damages. This assurance appears to have been made to encourage the Petitioner not to cut corners and to keep the quality of the building high. In fact, that was accomplished. The quality of the building was uncontestedly high. However, when the project was over, the architect's assurance to the contractor appears to have been false.

Mr. Schuster testified that although he did tell the contractor not to worry about liquidated damages, he did not mean for the contractor to assume that liquidated damages would not be assessed. This testimony is disingenuous.

It is not known at this time how many days would have been the appropriate number of days for the projects at issue. However, based upon the analysis of the six homes which were built, the average time of completion was 237 days. The Petitioner's completion was attained in 220 days. Thus, using the only information available at this time, it is concluded that 237 days was, for purposes of this analysis, a reasonable time within which to complete the project.

2. It is concluded that the 135 day time limit was knowingly and improperly included as a term of the contract and that Petitioner may not be held liable for the time he went beyond the 135 days.

3. It is concluded that the Petitioner, therefore, did not go beyond a reasonable time to complete the project.

4. It is further concluded that the Respondent erred in assessing liquidated damages against the Petitioner.

ISSUE 2: Does the Respondent owe the Petitioner $20,816 in Extended Field Overhead?

5. The Petitioner has requested payment for the time he was required to stay on the job beyond the 135 days. His assertion is that the architect inappropriately and knowingly estimated 135 days, causing the Petitioner to be unable to complete the project according to that time. The Petitioner asserts that since the architect billed the owner for his time on the project beyond the 135 days, the Petitioner so too should be able to bill for that time.

The architect knew that the owner did not have money to pay his bill and that the only way his bill would be paid would be by the owner allowing the architect to pursue liquidated damages. While the evidence indicates that liquidated damages are a common contract clause, they are most often not assessed. The architect obligated the owner to agree to seek liquidated damages in order to pay his own bills.

Petitioner requests $20,816 for the 85 days he went beyond the 135 day time limit, which amount calculates out to approximately $245.00 per day.

In Barrett, supra, the Court also determined that where the contractor had charged the cost of doing business beyond the time limit of the original contract, those costs should be allowed to the contractor.

In the Barrett case, the Court based that finding on invoices, canceled checks and time records submitted by the contractor as well as testimony on behalf of the contractor. In the instant case, the undersigned had not reviewed records in a depth similar to those reviewed in the Barrett case.

6. It is concluded that, in the limited circumstances of this case where an architect has knowingly misrepresented the time of completion of the project, has knowingly misled the contractor on the issue of the assessment of liquidated damages, and was in a singular position to gain from the assessment of liquidated damages, the Petitioner should recover Extended Field Overhead.

7. It is further concluded that the Respondent should be provided with detailed records of expenses incurred and should have the opportunity to review an itemized bill.

Based upon the above Conclusions of Law, the undersigned makes the following recommendations:

RECOMMENDATIONS

1. That the Respondent reverse its decision to assess $15,200 in liquidated damages against the Petitioner.

2. That the Respondent allow the Petitioner the Extended Field Overhead in a true and accurate amount to be

determined after review of the Petitioner's records.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Administration.

This the 1st day of June, 1995.

Dolores O. Nesnow
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
95 DOJ 0101

ALEXANDER DOUGLAS JONES Petitioner,	)	
v.	)	PROPOSAL FOR DECISION
NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION Respondent.	)	

This matter was heard before Fred G. Morrison Jr., Senior Administrative Law Judge, on May 22, 1995, in Raleigh, North Carolina. Following the hearing the parties stated that they would not be submitting proposed findings of fact and conclusions of law.

APPEARANCES

John C. Hunter, Attorney at Law, appeared for the Petitioner and Robin P. Pendergraft, Special Deputy Attorney General, appeared for the Respondent.

ISSUE

Whether the Respondent should suspend Petitioner's probation/parole officer certification.

STATUTES AND RULES AT ISSUE

G.S. 113-294(m)
12 NCAC 9A .0103(5)(a)
12 NCAC 9A .0103(7)
12 NCAC 9A .0103(21)(b)
12 NCAC 9A .0203
12 NCAC 9A .0204(b)(3)(A)
12 NCAC 9A .0205(b)(1)

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based on stipulations, official notice, and competent evidence admitted at the hearing, the Administrative Law Judge makes the following:

STIPULATED FACTS

1. Both parties are properly before this Administrative Law Judge, that jurisdiction and venue are proper, that both parties received notice of hearing, and that Petitioner received the Deferral of Suspension of his Probation/Parole Officer Certification letter mailed by Respondent on November 23, 1994.

2. The North Carolina Criminal Justice Education and Training Standards Commission (Respondent) has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify criminal justice officers and to deny, revoke or suspend such certification.

3. Petitioner applied with Respondent for certification as a Probation/Parole Officer with the North Carolina Department of Correction in December 1993.

4. Petitioner was issued a probationary certification (PRD 241358154) by Respondent effective January 5, 1994, to work with the North Carolina Department of Correction.

5. Petitioner successfully completed the Basic Probation/Parole Officer Course at the North Carolina Justice Academy on February 18, 1994.

6. Petitioner was issued a general certification (GND 241358154) by Respondent effective November 15, 1994, to work with the North Carolina Department of Correction.

7. On January 8, 1994, Petitioner received two citations issued by Wildlife Officer Wes Barger who charged Petitioner with the following four duck hunting offenses:

(1) Taking migratory waterfowl with possession of toxic lead shot (94 CR 06614);
(2) Taking migratory waterfowl with shotgun capable of holding more than 3 shells (94 CR 06614);
(3) Taking migratory waterfowl during closed season (94 CR 06617); and
(4) Taking migratory waterfowl without purchasing a state migratory waterfowl stamp (94 CR 06617).

8. On April 29, 1994, Petitioner pled guilty to and was found guilty of taking migratory waterfowl during closed season and taking migratory waterfowl without purchasing a state migratory waterfowl stamp (94 CR 06617) and was ordered to pay the costs of court upon a prayer for judgment continued. The other two charges (94 CR 06614) were dismissed.

9. Petitioner promptly notified his supervisors of the dispositions of the above-mentioned cases, and subsequently thereafter notified Respondent by letter.

10. Respondent defines "Class B misdemeanor" as:

> (A)n act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years.

11. The wildlife offense of taking migratory waterfowl during the closed season is a criminal offense in violation of N.C.G.S. 113-294(m). It carries a possible maximum punishment of two (2) years imprisonment, and thus meets the definition of "Class B misdemeanor."

ADJUDICATED FACTS

1. Petitioner received the two citations set out above prior to his attending the Basic Probation/Parole Officer Course at the North Carolina Justice Academy. He was not aware that the offenses could jeopardize his certification.

2. Petitioner has not received any other citations since becoming a Probation/Parole Officer.

3. Petitioner's supervisor and coworkers consider him to be a promising, competent and humane Probation/Parole Officer.

4. An active suspension of Petitioner's certification would result in Petitioner losing his employment with the North Carolina Department of Correction, Division of Adult Probation and Parole. According to his Chief Probation/Parole Officer, this would cause a hardship on their unit.

5. Petitioner is remorseful for his actions of January 8, 1994, and understands that any such actions reflect poorly on the criminal justice community.

6. Petitioner's reputation and standing in the community for honesty and trustworthiness are high.

Based on the foregoing Stipulated and Adjudicated Facts, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction is proper, that both parties received

notice of hearing, and that Petitioner received notice of Deferral of his Probation/Parole Officer Certification by Respondent.

2. The Standards Committee based its recommendations upon 12 NCAC 9A .0204(b)(3)(A) which states that the Commission may suspend or revoke certification when an officer has committed or been convicted of a Class B misdemeanor. Petitioner's guilty pleas on April 29, 1994, constituted a violation of this rule.

3. The North Carolina Criminal Justice Education and Training Standards Commission has the authority pursuant to rule 12 NCAC 9A .0205(b)(1) to reduce or suspend the period of sanction, or substitute a period of probation in lieu of suspension of certification following an administrative hearing, if the cause of the sanction is the commission or conviction of a Class B Misdemeanor. This rule applies to Petitioner's conviction.

4. 12 NCAC 9A .0203 provides that Respondent may sanction individuals who knowingly and wilfully violate its rules. Since Petitioner's violation occurred prior to his attending the Basic Probation/Parole Officer Course at the Justice Academy, he is less culpable, as there was no evidence of wilfulness on his part.

PROPOSAL FOR DECISION

Based upon the foregoing, it is hereby proposed that Petitioner's certification not be suspended, as Petitioner has been appropriately warned and reprimanded by virtue of this proceeding.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B--42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 13th day of June, 1995.

Fred G. Morrison, Jr.
Senior Administrative Law Judge

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural	Hearing Aid Dealers and Fitters	22
	Resources	Landscape Architects	26
16	Public Education	Landscape Contractors	28
17	Revenue	Marital and Family Therapy	31
18	Secretary of State	Medical Examiners	32
19A	Transportation	Midwifery Joint Committee	33
20	Treasurer	Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

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

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
ACUPUNCTURE LICENSING BOARD						
21 NCAC 01 .0101	10:02 NCR 150	07/01/95				
.0201	10:07 NCR 585	10/01/95				
.0401 - .0402	10:02 NCR 150	07/01/95				
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
AGRICULTURE						
2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS						
21 NCAC 08F .0105	10:04 NCR 255	08/01/95				
.0113	10:04 NCR 255	08/01/95				
08G .0401	10:04 NCR 255	08/01/95				
08J .0005	10:04 NCR 255	08/01/95				
.0008	10:04 NCR 255	08/01/95				
08M .0102	10:04 NCR 255	08/01/95				
.0104	10:04 NCR 255	08/01/95				
.0306	10:04 NCR 255	08/01/95				
.0401	10:04 NCR 255	08/01/95				
08N .0203	10:04 NCR 255	08/01/95				
.0302	10:04 NCR 255	08/01/95				
.0307	10:04 NCR 255	08/01/95				
CHIROPRACTIC EXAMINERS						
21 NCAC 10 .0203	10:04 NCR 261	08/01/95				
COMMUNITY COLLEGES						
23 NCAC 02C .0108	10:03 NCR 208	09/01/95				
.0210	10:07 NCR 000	01/01/96				
.0211	10:03 NCR 208	09/01/95				
.0301	10:07 NCR 587	01/01/96				
.0306	10:03 NCR 208	09/01/95				
02E .0403	10:07 NCR 587	01/01/96				
COMMERCE						
4 NCAC 06C .0203	10:05 NCR 300	09/01/95				
CORRECTION						
5 NCAC 05 .0001	10:01 NCR 12	07/01/95			07/01/95	
CULTURAL RESOURCES						
7 NCAC 02F .0002	10:01 NCR 12	07/01/95				
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES						
15A NCAC 02B .0101	10:01 NCR 13					Correction to Notice
.0104	10:01 NCR 13					Correction to Notice
.0202	10:01 NCR 13					Correction to Notice
.0211	10:01 NCR 13					Correction to Notice
.0301	10:01 NCR 13					Correction to Notice
.0304	10:04 NCR 246	01/01/96				
.0304	10:05 NCR 301	11/01/95				
.0316	10:04 NCR 246	01/01/96				
02D .0520	10:01 NCR 13	07/01/95	x	x		
.0531	10:01 NCR 13	07/01/95	x	x	07/01/95	
.0902	10:01 NCR 13	07/01/95	x	x	07/01/95	
.0909	10:01 NCR 13	07/01/95	x	x	07/01/95	
.0952	10:01 NCR 13	07/01/95	x	x	07/01/95	
.1402	10:01 NCR 13	07/01/95	x	x	07/01/95	

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		.1406	10:01 NCR 13	07/01/95	x	x		
		.1409	10:01 NCR 13	07/01/95	x	x		
		.1701 - .1702	10:01 NCR 13	07/01/95	x	x		
		.1801 - .1803	10:01 NCR 13	07/01/95	x	x		
NPDES Permit			10:02 NCR 56					
	04A	.0001	10:07 NCR 579	10/01/95				
		.0005	10:07 NCR 579	10/01/95				
	04B	.0016	10:07 NCR 579	10/01/95				
		.0020	10:07 NCR 579	10/01/95				
		.0028	10:02 NCR 149	07/01/95				
		.0029 - .0030	10:07 NCR 579	10/01/95				
	04C	.0007 - .0008	10:07 NCR 579	10/01/95				
		.0010	10:07 NCR 579	10/01/95				
	04D	.0002	10:07 NCR 579	10/01/95				
		.0003	10:07 NCR 579	10/01/95				
	07H	.0208	10:03 NCR 197	12/01/95				
		.2201 - .2202	10:03 NCR 204	12/01/95				
		.2203	10:03 NCR 204	12/01/95	x			
		.2204 - .2205	10:03 NCR 204	12/01/95				
	10B	.0115	10:06 NCR 338	10/01/95				
		.0202 - .0203	10:01 NCR 26	07/01/95			07/01/95	
		.0202	10:04 NCR 249	08/01/95				
		.0214	10:01 NCR 26	07/01/95			07/01/95	
	10C	.0404	10:06 NCR 338	12/01/95				
		.0407	10:06 NCR 338	12/01/95				
	10D	.0002 - .0003	10:01 NCR 26	07/01/95			07/01/95	
		.0003	10:04 NCR 250	08/01/95				
		.0003	10:06 NCR 338	09.01/95				
	10F	.0313	10:06 NCR 338	10/01/95				
		.0317	10:01 NCR 26	07/01/95			07/01/95	
Wildlife Proclamation/Striped Bass			10:02 NCR 57	04/10/95				
			10:03 NCR 195	04/15/95				
	13B	.0101	10:06 NCR 350	10/01/95				
		.0103	10:06 NCR 350	10/01/95				
		.0503	10:06 NCR 350	10/01/95				
		.0802 - 0829	10:06 NCR 350	10/01/95				
		.1627	10:06 NCR 350	10/01/95				
	16A	.1001	10:07 NCR 582	01/01/96				
		.1002 - .1006	10:07 NCR 582	01/01/96				
	18A	.2508	10:06 NCR 350	01/01/96				
		.2511	10:06 NCR 350	01/01/96				
		.2516 - .2519	10:06 NCR 350	01/01/96				
		.2521 - .2524	10:06 NCR 350	01/01/96				
		.2526	10:06 NCR 350	01/01/96				
		.2528 - .2535	10:06 NCR 350	01/01/96				
		.2537	10:06 NCR 350	01/01/96				
		.2540 - .2543	10:06 NCR 350	01/01/96				
	19A	.0401	10:06 NCR 350	10/01/95				
		.0406	10:06 NCR 350	10/01/95				
		.0502	10:06 NCR 350	10/01/95				
	19C	.0206	10:05 NCR 305	10/01/95	x			
	19H	.0702	10:07 NCR 582	10/01/95				
	24A	.0404	10:06 NCR 350	10/01/95	x			
FINAL DECISION LETTERS								
Voting Rights Act			10:01 NCR 02					
			10:03 NCR 194					
			10:05 NCR 298					
GOVERNOR'S EXECUTIVE ORDERS								
Number 72			10:01 NCR 01				03/06/95	
Number 73			10:02 NCR 54				03/15/95	
Number 74			10:02 NCR 54				03/27/95	

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
Number 75	10:03 NCR 191				03/30/95	
Number 76	10:03 NCR 191				04/03/95	
Number 77	10:05 NCR 297				05/02/95	
Number 78	10:06 NCR 336				05/23/95	
Number 79	10:07 NCR 427				06/07/95	
Number 80	10:07 NCR 427				06/13/95	
HUMAN RESOURCES						
10 NCAC 03H .0108 - .0109	10:02 NCR 58	09/01/95				
.0206 - .0220	10:02 NCR 58	09/01/95				
.0306 - .0318	10:02 NCR 58	09/01/95				
.0407 - .0409	10:02 NCR 58	09/01/95				
.0505 - .0507	10:02 NCR 58	09/01/95				
.0510 - .0517	10:02 NCR 58	09/01/95				
.0605 - .0609	10:02 NCR 58	09/01/95				
.0705 - .0712	10:02 NCR 58	09/01/95				
.0810 - .0812	10:02 NCR 58	09/01/95				
.0903 - .0911	10:02 NCR 58	09/01/95				
.1003 - .1008	10:02 NCR 58	09/01/95				
.1105 - .1109	10:02 NCR 58	09/01/95				
.1130 - .1136	10:02 NCR 58	09/01/95				
.1150 - .1163	10:02 NCR 58	09/01/95				
.1204 - .1208	10:02 NCR 58	09/01/95				
.1210	10:02 NCR 58	09/01/95				
.1306 - .1308	10:02 NCR 58	09/01/95				
.1405 - .1406	10:02 NCR 58	09/01/95				
.1408 - .1410	10:02 NCR 58	09/01/95				
.1501 - .1503	10:02 NCR 58	09/01/95				
.1612 - .1613	10:02 NCR 58	09/01/95				
.1703 - .1704	10:02 NCR 58	09/01/95				
.1804 - .1807	10:02 NCR 58	09/01/95				
.2001	10:02 NCR 58	09/01/95				
.2101 - .2110	10:02 NCR 58	09/01/95				
.2201 - .2212	10:02 NCR 58	09/01/95				
.2301 - .2308	10:02 NCR 58	09/01/95				
.2401 - .2402	10:02 NCR 58	09/01/95				
.2501 - .2506	10:02 NCR 58	09/01/95				
.2601 - .2607	10:02 NCR 58	09/01/95				
.2701	10:02 NCR 58	09/01/95				
.2801 - .2802	10:02 NCR 58	09/01/95				
.2901 - .2902	10:02 NCR 58	09/01/95				
.3001 - .3005	10:02 NCR 58	09/01/95				
.3011 - .3016	10:02 NCR 58	09/01/95				
.3021 - .3032	10:02 NCR 58	09/01/95				
.3101 - .3104	10:02 NCR 58	09/01/95				
.3201 - .3202	10:02 NCR 58	09/01/95				
.3301 - .3302	10:02 NCR 58	09/01/95				
.3401 - .3404	10:02 NCR 58	09/01/95				
10 NCAC 14B .0501 - .0503	10:07 NCR 430	05/01/96				
.0505 - .0509	10:07 NCR 430	05/01/96				
14K .0101 - .0103	10:07 NCR 430	05/01/96				
.0201 - .0219	10:07 NCR 430	05/01/96				
.0301 - .0310	10:07 NCR 430	05/01/96				
.0312 - .0315	10:07 NCR 430	05/01/96				
.0317 - .0324	10:07 NCR 430	05/01/96				
.0326 - .0329	10:07 NCR 430	05/01/96				
.0333 - .0348	10:07 NCR 430	05/01/96				
.0350 - .0365	10:07 NCR 430	05/01/96				
.0401 - .0408	10:07 NCR 430	05/01/96				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
				State	Local		
14L	.0101 - .0106	10:07 NCR 430	05/01/96				
	.0201 - .0203	10:07 NCR 430	05/01/96				
	.0301 - .0308	10:07 NCR 430	05/01/96				
	.0310	10:07 NCR 430	05/01/96				
	.0401 - .0407	10:07 NCR 430	05/01/96				
	.0601 - .0606	10:07 NCR 430	05/01/96				
	.0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0701 - .0709	10:07 NCR 430	05/01/96				
	.0711 - .0712	10:07 NCR 430	05/01/96				
14M	.0101 - .0113	10:07 NCR 430	05/01/96				
	.0501 - .0511	10:07 NCR 430	05/01/96				
	.0601 - .0602	10:07 NCR 430	05/01/96				
	.0604	10:07 NCR 430	05/01/96				
	.0606	10:07 NCR 430	05/01/96				
	.0608 - .0612	10:07 NCR 430	05/01/96				
	.0614 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0621	10:07 NCR 430	05/01/96				
	.0701 - .0716	10:07 NCR 430	05/01/96				
14N	.0101 - .0107	10:07 NCR 430	05/01/96				
	.0201 - .0207	10:07 NCR 430	05/01/96				
	.0301 - .0307	10:07 NCR 430	05/01/96				
	.0401 - .0406	10:07 NCR 430	05/01/96				
	.0501 - .0507	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0705	10:07 NCR 430	05/01/96				
	.0801 - .0811	10:07 NCR 430	05/01/96				
14O	.0301 - .0314	10:07 NCR 430	05/01/96				
	.0401 - .0409	10:07 NCR 430	05/01/96				
	.0411 - .0416	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0601 - .0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0618	10:07 NCR 430	05/01/96				
	.0701 - .0710	10:07 NCR 430	05/01/96				
14V	.0101 - .0104	10:07 NCR 430	05/01/96				
	.0201 - .0208	10:07 NCR 430	05/01/96				
	.0301 - .0304	10:07 NCR 430	05/01/96				
	.0401 - .0405	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0701 - .0712	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1201 - .1203	10:07 NCR 430	05/01/96				
	.1301 - .1303	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1501 - .1504	10:07 NCR 430	05/01/96				
	.2101 - .2104	10:07 NCR 430	05/01/96				
	.2201 - .2204	10:07 NCR 430	05/01/96				
	.2301 - .2306	10:07 NCR 430	05/01/96				
	.2401 - .2404	10:07 NCR 430	05/01/96				
	.2501 - .2505	10:07 NCR 430	05/01/96				
	.3101 - .3103	10:07 NCR 430	05/01/96				
	.3201 - .3203	10:07 NCR 430	05/01/96				
	.3301 - .3303	10:07 NCR 430	05/01/96				
	.3401 - .3403	10:07 NCR 430	05/01/96				
	.3501 - .3503	10:07 NCR 430	05/01/96				
	.3601 - .3604	10:07 NCR 430	05/01/96				
	.3701 - .3703	10:07 NCR 430	05/01/96				
	.3801 - .3803	10:07 NCR 430	05/01/96				
	.3901 - .3903	10:07 NCR 430	05/01/96				
	.4001 - .4003	10:07 NCR 430	05/01/96				

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				State	Local		
	.4101 - .4104	10:07 NCR 430	05/01/96				
	.5001 - .5002	10:07 NCR 430	05/01/96				
	.5101 - .5104	10:07 NCR 430	05/01/96				
	.5201 - .5204	10:07 NCR 430	05/01/96				
	.5301 - .5303	10:07 NCR 430	05/01/96				
	.5401 - .5403	10:07 NCR 430	05/01/96				
	.5501 - .5503	10:07 NCR 430	05/01/96				
	.5601 - .5603	10:07 NCR 430	05/01/96				
	.5701 - .5703	10:07 NCR 430	05/01/96				
	.5801 - .5804	10:07 NCR 430	05/01/96				
	.5901 - .5903	10:07 NCR 430	05/01/96				
	.6001 - .6003	10:07 NCR 430	05/01/96				
	.6101 - .6103	10:07 NCR 430	05/01/96				
	.6201 - .6202	10:07 NCR 430	05/01/96				
	.6301 - .6303	10:07 NCR 430	05/01/96				
	.6401 - .6403	10:07 NCR 430	05/01/96				
	.6501 - .6503	10:07 NCR 430	05/01/96				
	.6601 - .6603	10:07 NCR 430	05/01/96				
	.6701 - .6702	10:07 NCR 430	05/01/96				
	.6801 - .6802	10:07 NCR 430	05/01/96				
	.6901 - .6903	10:07 NCR 430	05/01/96				
18A	.0124 - .0128	10:07 NCR 430	05/01/96				
	.0130	10:07 NCR 430	05/01/96				
	.0132 - .0133	10:07 NCR 430	05/01/96				
	.0135 - .0136	10:07 NCR 430	05/01/96				
18I	.0114 - .0120	10:07 NCR 430	05/01/96				
18J	.0110 - .0119	10:07 NCR 430	05/01/96				
	.0212 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0311	10:07 NCR 430	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0701 - .0715	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.0803	10:02 NCR 118	07/01/95			07/01/95	
18K	.0109 - .0116	10:07 NCR 430	05/01/96				
18L	.0107 - .0108	10:07 NCR 430	05/01/96				
	.0223 - .0224	10:07 NCR 430	05/01/96				
	.0331 - .0336	10:07 NCR 430	05/01/96				
	.0338 - .0339	10:07 NCR 430	05/01/96				
	.0428 - .0434	10:07 NCR 430	05/01/96				
	.0504	10:07 NCR 430	05/01/96				
	.0511	10:07 NCR 430	05/01/96				
	.0513	10:07 NCR 430	05/01/96				
	.0701 - .0705	10:07 NCR 430	05/01/96				
	.0707	10:07 NCR 430	05/01/96				
	.0801	10:07 NCR 430	05/01/96				
	.0803 - .0809	10:07 NCR 430	05/01/96				
	.0901 - .0904	10:07 NCR 430	05/01/96				
	.1001 - .1006	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1105 - .1107	10:07 NCR 430	05/01/96				
	.1201	10:07 NCR 430	05/01/96				
	.1203 - .1206	10:07 NCR 430	05/01/96				
	.1301 - .1309	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1501 - .1525	10:07 NCR 430	05/01/96				
18M	.0107 - .0110	10:07 NCR 430	05/01/96				
	.0206 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0307	10:07 NCR 430	05/01/96				
	.0406 - .0409	10:07 NCR 430	05/01/96				
	.0505 - .0506	10:07 NCR 430	05/01/96				
	.0607 - .0608	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0706	10:07 NCR 430	05/01/96				

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			.0708 - .0714	10:07 NCR 430	05/01/96				
			.0801 - .0803	10:07 NCR 430	05/01/96				
			.0817 - .0819	10:07 NCR 430	05/01/96				
			.0824 - .0838	10:07 NCR 430	05/01/96				
			.0901 - .0908	10:07 NCR 430	05/01/96				
			.1001 - .1009	10:07 NCR 430	05/01/96				
			.1101 - .1106	10:07 NCR 430	05/01/96				
			.1203 - .1204	10:07 NCR 430	05/01/96				
			.1302 - .1305	10:07 NCR 430	05/01/96				
			.1401 - .1403	10:07 NCR 430	05/01/96				
			.1405 - .1410	10:07 NCR 430	05/01/96				
		18N	.0105 - .0110	10:07 NCR 430	05/01/96				
			.0204 - .0212	10:07 NCR 430	05/01/96				
			.0305 - .0306	10:07 NCR 430	05/01/96				
		18P	.0901 - .0903	10:07 NCR 430	05/01/96				
			.1001 - .1004	10:07 NCR 430	05/01/96				
		18Q	.0284	10:07 NCR 430	05/01/96				
			.0286 - .0287	10:07 NCR 430	05/01/96				
			.0520 - .0521	10:07 NCR 430	05/01/96				
			.0538 - .0552	10:07 NCR 430	05/01/96				
		26B	.0124	10:02 NCR 118	07/01/95	x		07/01/95	
		26H	.0302	10:04 NCR 228	08/01/95	x			
			.0304 - .0305	10:04 NCR 228	08/01/95	x			
			.0308 - .0309	10:04 NCR 228	08/01/95	x			
		26H	.0213	10:02 NCR 118	07/01/95			07/01/95	
		41F	.0706	10:03 NCR 196	08/01/95				
			.0812	10:03 NCR 196	08/01/95				
INSURANCE									
11	NCAC	06A	.0812	10:04 NCR 246	08/01/95				
JUSTICE									
12	NCAC	04E	.0104	10:07 NCR 573	10/01/95				
		07D	.0201	10:07 NCR 575	10/01/95				
			.0301	10:07 NCR 575	10/01/95				
			.0401	10:07 NCR 575	10/01/95				
			.0701	10:07 NCR 575	10/01/95				
			.0706	10:07 NCR 575	10/01/95				
			.0801	10:07 NCR 575	10/01/95				
			.0806	10:07 NCR 575	10/01/95				
			.0902	10:07 NCR 575	10/01/95				
			.0904	10:07 NCR 575	10/01/95				
		09A	.0204	10:02 NCR 122	08/01/95				
		09B	.0113	10:02 NCR 122	08/01/95				
			.0201 - .0202	10:02 NCR 122	08/01/95				
			.0205 - .0206	10:02 NCR 122	08/01/95				
			.0210	10:02 NCR 122	08/01/95				
			.0212 - .0214	10:02 NCR 122	08/01/95				
			.0226 - .0228	10:02 NCR 122	08/01/95				
			.0232 - .0233	10:02 NCR 122	08/01/95				
		09C	.0401	10:02 NCR 122	08/01/95				
			.0601	10:02 NCR 122	08/01/95				
		09D	.0102	10:02 NCR 122	08/01/95				
			.0104 - .0106	10:02 NCR 122	08/01/95				
		11	.0210	10:05 NCR 301	09/01/95				
LABOR									
13	NCAC			10:01 NCR 10	01/01/96				Notice on Subject Matter
				10:01 NCR 12	01/01/96				Notice on Subject Matter
				10:02 NCR 149	10/01/95				Notice on Subject Matter
				10:02 NCR 149	01/01/96				Notice on Subject Matter
				10:02 NCR 149	01/01/96				Notice on Subject Matter
				10:02 NCR 149	02/01/96				Notice on Subject Matter

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	10:03 NCR 196	01/01/96				Notice on Subject Matter
	10:03 NCR 197	01/01/96				Notice on Subject Matter
12 .0101	10:02 NCR 142	08/01/95				
.0303 - .0315	10:02 NCR 142	08/01/95				
.0501 - .0502	10:02 NCR 142	08/01/95				
.0803 - .0808	10:02 NCR 142	08/01/95				
LIST OF RULES CODIFIED						
	10:02 NCR 167					Rules Filed 03/95
	10:04 NCR 272					Rules Filed 04/95
MEDICAL EXAMINERS						
21 NCAC 32H .0102	10:02 NCR 151	07/01/96				
.0201	10:02 NCR 151	07/01/96				
.0203	10:02 NCR 151	07/01/96				
.0408	10:02 NCR 151	07/01/96				
.0506	10:02 NCR 151	07/01/96				
.0601	10:02 NCR 151	07/01/95				
.0602	10:02 NCR 151	07/01/96				
.0801	10:02 NCR 151	07/01/96				
.1001	10:02 NCR 151	07/01/96				
321 .0003 - .0004	10:02 NCR 151	07/01/95				
NURSING HOME ADMINISTRATORS						
21 NCAC 37 .0101	10:04 NCR 262	08/01/95				
.0302	10:03 NCR 206	08/01/95				
.0404	10:03 NCR 206	08/01/95				
.0502	10:03 NCR 206	08/01/95				
.0603	10:03 NCR 206	08/01/95				
.0904	10:04 NCR 262	08/01/95				
.0912	10:03 NCR 206	08/01/95				
.0914	10:03 NCR 206	08/01/95				
PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS						
21 NCAC 50 .0402	10:01 NCR 39	09/01/95				
.0505	10:01 NCR 39	09/01/95				
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95				
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95				
.0503	10:04 NCR 263	08/01/95				
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95				
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
.0515	10:02 NCR 157	07/01/95			07/01/95	
REFRIGERATION EXAMINERS						
21 NCAC 60 .0102	10:04 NCR 264	08/01/95				
.0204	10:04 NCR 264	08/01/95				
.0314	10:04 NCR 264	08/01/95				
.1102	10:04 NCR 264	08/01/95				
REVENUE						
Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
SECRETARY OF STATE						
18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
STATE PERSONNEL						
25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0509	10:07 NCR 588	10/01/95				
.0808	10:04 NCR 264	08/01/95				
.1001	10:04 NCR 264	08/01/95				
.1009	10:04 NCR 264	08/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95				
01E .0804	10:04 NCR 264	08/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01J .0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				
.0610 - .0612	10:07 NCR 588	10/01/95				
.0613 - .0615	10:07 NCR 588	10/01/95				
01K .0312	10:04 NCR 264	08/01/95				
TRANSPORTATION						
19A NCAC 02D .0801	10:04 NCR 254	09/01/95				

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Adminiatration - Full Title	**201 00 00**	**$63.00**	**$90.00**
Division of Purchase & Contract	201 10 05	$21.00	$30.00
Federal Block Grant Funds	201 10 33	$17.50	$25.00
Title 2 - Dept. of Agriculture - Full Title	**202 00 00**	**$98.00**	**$140.00**
Food & Drug Protection Division	202 15 09	$28.00	$40.00
Structural Pest Control Committee	202 15 34	$21.00	$30.00
Agricultural Markets	202 15 43	$21.00	$30.00
Plant Industry	202 15 48	$21.00	$30.00
Animal Industry	202 15 52	$21.00	$30.00
Title 3 - Dept. of State Auditor - Full Title	**203 00 00**	**$7.00**	**$10.00**
Title 4 - Dept. of Commerce - Full Title	**204 00 00**	**$87.50**	**$125.00**
Alcoholic Beverage Control Commission	204 15 02	$12.00	$40.00
Banking Commission	204 15 03	$24.50	$35.00
Credit Union Division	204 15 06	$14.00	$20.00
Savings & Loan Division	204 15 09	$14.00	$20.00
Industrial Commission/Workers Compensation	204 15 10	$14.00	$20.00
Savings Institutions Division	204 15 16	$24.50	$35.00
Title 5 - Dept. of Corrections - Full Title	**205 00 00**	**$56.00**	**$80.00**
Division of Prisons	205 15 02	$24.50	$35.00
Title 6 - Council of State - Full Title	**206 00 00**	**$21.00**	**$30.00**
Title 7 - Dept. of Cultural Resources - Full Title	**207 00 00**	**$21.00**	**$30.00**
Title 8 - State Board of Elections - Full Title	**208 00 00**	**$7.00**	**$10.00**
Title 9 - Offices of the Governor & Lt. Governor - Full Title	**209 00 00**	**$31.50**	**$45.00**
Title 10 - Dept. of Human Resources - Full Title	**210 00 00**	**$346.50**	**$495.00**
Licensing of Health Facilities	210 20 10	$45.50	$65.00
Detention Facilities	210 20 20	$31.50	$45.00
Mental Health & Rehabilitation Services	210 20 30	$77.00	$110.00
Social Services	210 20 40	$119.00	$170.00
Children Services/Day Care	210 20 41	$31.50	$45.00
Services for the Aging	210 20 42	$31.50	$45.00
Services for the Blind	210 20 43	$28.00	$40.00
Services for the Deaf & Hard of Hearing	210 20 44	$17.50	$25.00
Employment Opportunities	210 20 45	$35.00	$50.00
Title 11 - Dept. of Insurance - Full Title	**211 00 00**	**$63.00**	**$90.00**
Insurance	211 10 01	$56.00	$80.00
Consumer Services	211 10 04	$24.50	$35.00
Fire & Rescue Services	211 10 05	$17.50	$25.00
Agent Services	211 10 06	$28.00	$40.00
Engineering & Building Codes	211 10 08	$21.00	$30.00
Title 12 - Dept. of Justice - Full Title	**212 00 00**	**$63.00**	**$90.00**
Private Protective Sarvices	212 10 07	$21.00	$30.00
Police & Sheriff's Education & Training Standards	212 10 09	$31.50	$45.00
NC Alarm Systems Licensing Board	212 10 11	$17.50	$25.00
Title 13 - Dept. of Labor - Full Title	**213 00 00**	**$77.00**	**$110.00**
Mine & Quarry Safety	213 15 06	$14.00	$20.00
General Safety/OSHA	213 20 00	$31.50	$45.00
Wage & Hour Rules	213 15 12	$14.00	$20.00
Boiler & Pressure Vessel Safety	213 15 13	$14.00	$20.00
Apprenticeship & Training	213 15 14	$14.00	$20.00
Elevator & Amusement Device Safety	213 15 15	$14.00	$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	**214 00 00**	**$31.50**	**$45.00**
Alcohol Law Enforcement	214 00 08	$17.50	$25.00
Victims Compensation Fund	214 00 11	$14.00	$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	**215 00 00**	**$276.50**	**$395.00**
Environmental Management	215 15 00	$115.50	$165.00
Air Quality	215 15 10	$49.00	$70.00
Water Quality	215 15 20	$49.00	$70.00
Land & Waste Management	215 15 30	$56.00	$80.00
Solid Waste Management	215 15 31	$35.00	$50.00
Underground Storage Tanks	215 15 32	$17.50	$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	$31.50	$45.00
Environmental Health	215 25 00	$105.00	$150.00
Radiation/Nuclear Waste	215 25 10	$42.00	$60.00
Sanitation	215 25 20	$35.00	$50.00
Public Health	215 25 30	$59.50	$85.00
Intoxilizer & Breathalyser	215 25 31	$17.50	$25.00
Title 16 - Dept. of Public Instruction - Full Title	**216 00 00**	**$21.00**	**$30.00**
Elementary & Secondary Education	216 10 06	$21.00	$30.00
Title 17 - Dept. of Revenue - Full Title	**217 00 00**	**$91.00**	**$130.00**
Taxes on Individuals	217 15 10	$31.50	$45.00
Taxes on Business	217 15 20	$56.00	$80.00
Sales & Use Tax Division	217 15 27	$31.50	$45.00
Motor Fuels Tax Division	217 15 29	$21.00	$30.00
Title 18 - Secretary of State - Full Title	**218 00 00**	**$21.00**	**$30.00**
Securities Division	218 10 06	$21.00	$30.00
Title 19A - Dept. of Transportation - Full Title	**219 00 00**	**$63.00**	**$90.00**
Division of Highways	219 10 02	$28.00	$40.00
Division of Motor Vehicles	219 10 03	$35.00	$50.00
Title 20 - Dept. of the State Treasurer - Full Title	**220 00 00**	**$31.50**	**$45.00**
Title 21 - Occupational Licensing Boards - Full Title	**221 00 00**	**$143.50**	**$205.00**
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