



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1/18/19

1. Rule-Making Agency: Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

2. Rule citation & name: 10A NCAC 27G .0104, Staff Definitions

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 16, 2018
- b. Proposed Temporary Rule published on the OAH website: November 27, 2018
- c. Public Hearing date: December 5, 2018
- d. Comment Period: November 27, 2018 – December 18, 2018
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 19, 2018
- f. Adoption by agency on: January 9, 2019
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2017-32
Effective date: June 8, 2018
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☒ A recent federal regulation.
Cite: State Plan under Title XIX of the Social Security Act
Effective date: Approval date July 13, 2018
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Notice of approval of the State Plan Amendment by the Centers for Medicare and Medicaid Services

Explain: S.L. 2018-32 mandated that the Department of Health and Human Services (DHHS) submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to ensure that years of full-time experience required by the rule may be obtained either before or after obtaining the required educational degree. It required that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services amend rules, to implement that requirement, no later than six months after the date that DHHS received CMS approval of the necessary Medicaid State Plan Amendments. CMS approved the State Plan Amendment July 13, 2018.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2018-32 mandated that the Department of Health and Human Services (DHHS) submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to ensure that years of full-time experience required by the rule may be obtained either before or after obtaining the required educational degree. It required that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services amend rules, to implement that requirement, no later than six months after the date that DHHS received CMS approval of the necessary Medicaid State Plan Amendments. CMS approved the State Plan Amendment July 13, 2018.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

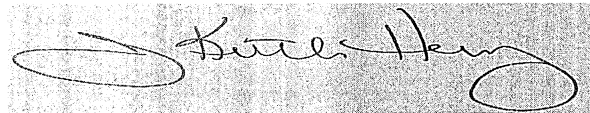
☒ No

9. Rule-making Coordinator: W. Denise Baker

Phone: 919-733-7011

E-Mail: dmhddsarules@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: J. Keith Henry

Title: Chair, Commission for MH/DD/SAS

E-Mail: khenry@bchfamily.org

Agency contact, if any:

Phone:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-32
HOUSE BILL 478**

AN ACT TO ALLOW ALL YEARS OF FULL-TIME MENTAL HEALTH,
DEVELOPMENTAL DISABILITY, AND SUBSTANCE ABUSE SERVICES
(MH/DD/SAS) EXPERIENCE TO APPLY TO THE QUALIFICATIONS REQUIRED
FOR MH/DD/SAS QUALIFIED PROFESSIONALS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services (DHHS) and its Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall amend the qualifications for Qualified Professionals within the mental health, developmental disability, and substance abuse services (MH/DD/SAS) system of care, as defined in rule, clinical care policies for the Medicaid program, and the North Carolina Medicaid State Plan. The amendments to the qualifications for Qualified Professionals shall ensure that the years of full-time MH/DD/SAS experience required by the rule may be obtained either before or after obtaining the required educational degree. No later than December 1, 2017, any State Plan amendment necessary to effect these changes shall be submitted by DHHS to the Centers for Medicare and Medicaid Services (CMS). The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall amend the rules as soon as possible but no later than six months after the date that DHHS has received CMS approval of the necessary Medicaid State Plan amendments.

SECTION 2. Any changes to clinical coverage policies and any changes to rules adopted by the Department of Health and Human Services relating to the qualifications for Qualified Professionals required under Section 1 of this act shall not become effective until DHHS has received CMS approval of the State Plan amendment required by Section 1 of this act.



SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of May,
2017.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:17 a.m. this 8th day of June, 2017

REQUEST FOR TEMPORARY RULE TECHNICAL CHANGE

AGENCY: Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

RULE CITATION: 10A NCAC 27G .0104

DEADLINE FOR RECEIPT: Friday, February 15, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please delete the "or" at the end of Sub-Items (1)(a) and (1)(b) and add the word "either" before "a" on line 6 so that the sentence reads "... means an individual who is either a:"

In Sub-Items (1)(a), (b), (c), and (d) and in (19)(a), (b), (c), and (d), and in (20)(a),(b), (c), and (d), what is meant by "full-time"? Is this defined elsewhere in rule or statute? Is this at the discretion of the facility?

In Items (6) and (7), please delete or define "active" and "direct" in "active direct treatment/habilitation"

In Items (6) and (7), please change "treatment/habilitation" to either "treatment and habilitation" or "treatment or habilitation", whichever is intended.

In Item (8), please change "Clinical/professional" to either "clinical and professional" or "clinical or professional", whichever is intended.

In Item (8), please delete or define "regularly" in "regularly scheduled"

In Item (8), line 15, please change "which" to "that" in "which is consistent"

In item (8), I assume that "accepted standards of practice" is a term of art? Please confirm.

In Item (12), please delete or define "full" in "full clinical licensure"

In Item (12), is there a reason that lines 24-26 are pulled out from the rest of the definition? I just want to make sure that there is not a clarity concern here.

In Item (15), what is meant by lines 31-33? Specifically, what is meant by "has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1,

Amber May
Commission Counsel
Date submitted to agency: Monday, February 5, 2019

2001"? Is the intent here to require a GED or diploma except for those folks who were employed prior to November 1, 2001? This language is not clear to me.

In Item (19), please add "either" at the end of line 10 and delete the "or" the end of (19)(a) and (b).

In Item (20), please delete "or" at the end of (20)(a) and (b) and consider revising Item (20) to say "Qualified substance abuse professional (QSAPP)" **means,** within the mh/dd/sad system of ~~care;~~ **care, means either:**

Please move "temporary amendment Eff. January 27, 2019" (and the updated potential effective date) to the end of the History Note so that it reads:

History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147;
Eff. May 11, 1996;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Temporary Amendment Eff. November 1, 2001;
Amended Eff. February 1, 2009; October 1, 2004; April 1, 2003;
Temporary Amendment Eff. xxxxxx

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, February 5, 2019

Rule 10A NCAC 27G .0104 is amended as a temporary rule as reflected below.

10A NCAC 27G .0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
 - (a) graduate of a college or university with a masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
 - (b) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
 - (c) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
 - (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.

- (2) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- (3) "Certified criminal justice addictions professional (CCJP)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice 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) "Certified substance abuse prevention consultant (CSAPC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- (6) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- (7) "Clinical staff member" means a qualified professional or associate professional who provides active direct treatment/habilitation to a client.
- (8) "Clinical/professional supervision" means regularly scheduled assistance by a qualified professional or associate 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 treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- (9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- (10) "Director" means the individual who is responsible for the operation of the facility.
- (11) "Licensed clinical addictions specialist (LCAS)" means an individual who is licensed as such by the North Carolina Substance Abuse Professional Practice Board.
- (12) "Licensed clinician" means an individual with full clinical licensure awarded by the State of North Carolina, as a physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or licensed clinical addictions specialist. "Licensed clinician" also includes an individual with full clinical licensure and certification as a certified clinical nurse specialist in psychiatric mental health advanced practice, or a certified nurse practitioner in psychiatric mental health advanced practice.
- (13) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (14) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (15) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.

- 1 (16) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina
2 and who has completed a training program in psychiatry accredited by the Accreditation Council for
3 Graduate Medical Education.
- 4 (17) "Psychologist" means an individual who is licensed to practice psychology in the State of North
5 Carolina as either a licensed psychologist or a licensed psychological associate.
- 6 (18) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by
7 the Council on Medical Education and Registration of the American Health Information Management
8 Association and who is currently registered or accredited by the American Health Information
9 Management Association.
- 10 (19) "Qualified professional" means, within the mh/dd/sas system of care:
11 (a) an individual who holds a license, provisional license, certificate, registration or permit
12 issued by the governing board regulating a human service profession, except a registered
13 nurse who is licensed to practice in the State of North Carolina by the North Carolina Board
14 of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the
15 population served; or
16 (b) a graduate of a college or university with a Masters degree in a human service field and has
17 one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa
18 experience with the population served, or a substance abuse professional who has one year of
19 full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism and
20 drug abuse counseling; or
21 (c) a graduate of a college or university with a bachelor's degree in a human service field and has
22 two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa
23 experience with the population served, or a substance abuse professional who has two years
24 of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism
25 and drug abuse counseling; or
26 (d) a graduate of a college or university with a bachelor's degree in a field other than human
27 services and has four years of full-time, pre- or post-bachelor's degree accumulated
28 supervised mh/dd/sa experience with the population served, or a substance abuse professional
29 who has four years of full-time, pre- or post-bachelor's degree accumulated supervised
30 experience in alcoholism and drug abuse counseling.
- 31 (20) "Qualified substance abuse prevention professional (QSAPP)" means, within the mh/dd/sas system of
32 care:
33 (a) a graduate of a college or university with a masters degree in a human service field and has
34 one year of full-time, post-graduate degree accumulated supervised experience in substance
35 abuse prevention; or

- 1 (b) a graduate of a college or university with a bachelor's degree in a human service field and has
2 two years of full-time, post-bachelor's degree accumulated supervised experience in
3 substance abuse prevention; or
4 (c) a graduate of a college or university with a bachelor's degree in a field other than human
5 services and has four years of full-time, post bachelor's degree accumulated supervised
6 experience in substance abuse prevention; or
7 (d) a substance abuse prevention professional who is certified as a Certified Substance Abuse
8 Prevention Consultant (CSAPC) by the North Carolina Substance Abuse Professional
9 Practice Board.
10

11 *History Note:* Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; S.L. 2017-32;
12 *Eff. May 11, 1996*;
13 *Temporary Amendment Eff. January 1, 2001*;
14 *Temporary Amendment Expired October 13, 2001*;
15 *Temporary Amendment Eff. January 27, 2019; November 1, 2001*;
16 *Amended Eff. February 1, 2009; October 1, 2004; April 1, 2003.*
17



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1/18/19

1. Rule-Making Agency: Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

2. Rule citation & name: Rule 10A NCAC 28A .0102, *Definitions*

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 16, 2018
- b. Proposed Temporary Rule published on the OAH website: November 27, 2018
- c. Public Hearing date: December 5, 2018
- d. Comment Period: November 27, 2018 – December 18, 2018
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 19, 2018
- f. Adoption by agency on: January 9, 2019
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2017-32
Effective date: June 8, 2018
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☒ A recent federal regulation.
Cite: State Plan under Title XIX of the Social Security Act
Effective date: Approval date July 13, 2018
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Notice of approval of the State Plan Amendment by the Centers for Medicare and Medicaid Services

Explain: S.L. 2018-32 mandated that the Department of Health and Human Services (DHHS) submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to ensure that years of full-time experience required by the rule may be obtained either before or after obtaining the required educational degree. It required that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services amend rules, to implement that requirement, no later than six months after the date that DHHS received CMS approval of the necessary Medicaid State Plan Amendments. CMS approved the State Plan Amendment July 13, 2018.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

S.L. 2018-32 mandated that the Department of Health and Human Services (DHHS) submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to ensure that years of full-time experience required by the rule may be obtained either before or after obtaining the required educational degree. It required that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services amend rules, to implement that requirement, no later than six months after the date that DHHS received CMS approval of the necessary Medicaid State Plan Amendments. CMS approved the State Plan Amendment July 13, 2018.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: W. Denise Baker

Phone: 919-733-7011

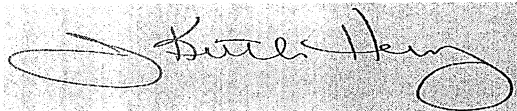
E-Mail: dmhddsarules@dhhs.nc.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: J. Keith Henry

Title: Chair, Commission for MH/DD/SAS

E-Mail: khenry@bchfamily.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TEMPORARY RULE TECHNICAL CHANGE

AGENCY: Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

RULE CITATION: 10A NCAC 28A .0102

DEADLINE FOR RECEIPT: Friday, February 8, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

With the use of semi-colons and ors in (b)(1), please consider breaking this out into a list.

In (b)(1), please delete or define "unreasonable" in "unreasonable confinement"

In (b)(1), line 9, please change "which" to "that" in "which are necessary"

In (b)(1), by whom is the treatment plan to be approved? The qualified professional?

Please delete the "or" at the end of (b)(2)(A) and (B) and add the word "either" before "a" on line 14

In (b)(2)(A), (B), (C), and (D) and in (b)(35)(A), (B), (C), and (D), what is meant by "full-time"? Is this defined elsewhere in rule or statute? Is this at the discretion of the facility?

In (b)(3), please delete or define "frequent" in "frequent access"

In (b)(6), what is considered to be "confidential information"? Is this pursuant to federal and state law?

In (b)(8), please change "treatment/habilitation" to either "treatment and habilitation" or "treatment or habilitation", whichever is intended.

In (b)(9), lines 24-26, should "informed consent" be pulled out and made its own definition?

In (b)(11), what Division?

In (b)(12), please delete or define "imminent", "unexpected", "severe", "inappropriate", and "rapid"

In (b)(12), please delete the clause regarding a medical emergency.

Amber May
Commission Counsel
Date submitted to agency: Monday, February 5, 2019

In (b)(13), please either change the brackets to commas in “as defined in... Rule]” or delete this clause entirely.

In (b)(13), please delete “seriously”

Just to make sure that I understand the difference in (b)(14) and (b)(22), an isolation timeout requires supervision, while an exclusionary timeout does not?

In (b)(15), please change “his/her” to “his or her” on lines 5 and 6. Also, please add a comma after “his/her resources”

In (b)(16), please confirm that the Forensic Division is still housed at Dorthea Dix.

In (b)(17), what are “situations within the jurisdiction of the state facility”? Is this set forth somewhere?

In (b)(17), please delete or define “without delay”

In (b)(19), please delete “or” on line 21 in between “private practice” and “be employed”

In (b)(21), please add commas before and after “but it is not limited to” Also, delete the “it”

In (b)(21), please consider breaking who may fall into this category into a list. As written, it’s a bit hard to read. At the very least, please add commas before and after “unless a valid.... competent jurisdiction”

In (b) (22), please delete the “but” in “but which is not locked”, change the “which” to “that” in “which is not locked”, and delete the “and” in “and where there is”

In (b)(22), please delete or define “continuous” in “continuous supervision”

In (b)(24), since you have used semi-colons in the definitions, please consider making this into a list.

In (b)(25), delete “reasonably”, “prompt”, and “seriously”

In (b)(25), please consider revising this to say something like “... means a situation where the client is unconscious, ill, or injured, and the circumstances require immediate medical or other health care related decisions and actions to prevent the worsening of the physical condition of the client.” As written, it’s a bit hard to follow.

In (b)(26), delete or define “ordinarily”

In (b)(26), I assume that your regulated public is familiar with what is considered to be “routine”?

Please consider breaking (b)(27) into list form so that it reads something like the following (as written, there are too many “or”s)

... a person under 18 years of age and who

*Amber May
Commission Counsel*

Date submitted to agency: Monday, February 5, 2019

(A) is not married;
(B) is not emancipated by decree issued by a court of competent jurisdiction; and
(C) is not a member of the armed forces.

In (b)(30), what is meant by lines 25-26? Specifically, what is meant by “has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001”? Is the intent here to require a GED or diploma except for those folks who were employed prior to November 1, 2001? This language is not clear to me.

In (b)(33), line 9, please change “which” to “that”

In (b)(34), should there be an “and” after “metal illness”?

In (b)(35), please delete “or” at the end of (b)(35(A) and (B) and add “either:” at the end of “who is”

In (b)(37), 122C-181(a)(2) refers to “developmental centers”, not “regional mental retardation centers.” Please review and clarify.

In (b)(40), please delete or define “special” in “special observation”

In (b)(41), line 19, please add a comma after “122C-3”

What is the intent of lines 19-21 (except... shall also be a qualified professional...) in (b)(42)? Is this requiring that the responsible professional meet the qualifications set forth for the qualified professional or are these interchangeable terms? Please review and clarify. Also, please see my note regarding (b)(37) as there is a reference to “mental retardation centers”

In (b)(41), what is meant by “normally”? How is it determined whether a time period greater than 30 days would be appropriate?

In (b)(43), please confirm that the references to Dorthea Dix are still applicable and accurate.

In (b)(49), please delete or define “adequately” in “adequately assess”

In (b) (50), please delete or define “distinctly” in “distinctly established”

Please move “temporary amendment Eff. January 27, 2019” (and the updated potential effective date) to the end of the History Note so that it reads:

*History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147;
Eff. October 1, 1984;
Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Temporary Amendment Eff. November 1, 2001;*

Amber May
Commission Counsel
Date submitted to agency: Monday, February 5, 2019

Amended Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest
Eff. June 24, 2017;
Temporary Amendment Eff. xxxxxx

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road,
Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, February 5, 2019

Rule 10A NCAC 28A .0102 is amended as a temporary rule as reflected below.

10A NCAC 28A .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

(b) As used in the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter, the following terms have the meanings specified:

(1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means; or unreasonable confinement; or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.

(2) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:

(A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or

(B) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or

(C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Client record" means any record made of confidential information.
- (7) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (8) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (9) "Consent" means concurrence by a client or his legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (10) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (11) "Division Director" means the Director of the Division or his designee.
- (12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(25) of this Rule for definition of medical emergency].
- (13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(25) of this Rule] where informed consent cannot be obtained from an

- 1 authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the
 2 physical condition or endanger the life of the client.
- 3 (14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit
 4 is not barred for the purpose of modifying behavior.
- 5 (15) "Exploitation" means the use of a client or her/his resources including borrowing, taking or using
 6 personal property with or without her/his permission for another person's profit, business or
 7 advantage.
- 8 (16) "Forensic Division" means the unit at Dorothea Dix Hospital which serves clients who are:
 9 (A) admitted for the purpose of evaluation for capacity to proceed to trial;
 10 (B) found not guilty by reason of insanity;
 11 (C) determined incapable of proceeding to trial; or
 12 (D) deemed to require a more secure environment to protect the health, safety and welfare of
 13 clients, staff and the general public.
- 14 (17) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation
 15 within the jurisdiction of the state facility. A grievance does not include complaints that can be
 16 resolved without delay by staff present. A complaint that is not resolved shall be filed and
 17 processed in accordance with the requirements of 10A NCAC 28B .0203.
- 18 (18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity
 19 regarding the protection of client rights.
- 20 (19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state
 21 facility in which the client is being treated. The psychiatrist may be in private practice, or be
 22 employed by another state facility, or be employed by a facility other than a state facility as
 23 defined in G.S. 122C-3(14).
- 24 (20) "Interpreter services" means specialized communication services provided for the hearing
 25 impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the
 26 National Association of the Deaf.
- 27 (21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic
 28 rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes
 29 but it is not limited to clients detained pending a district court hearing and clients involuntarily
 30 committed after a district court hearing. This term shall also include individuals who are
 31 defendants in criminal actions and are being evaluated in a state facility for mental responsibility
 32 or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless
 33 a valid order providing otherwise is issued from a court of competent jurisdiction and the civil
 34 commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- 35 (22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but
 36 which is not locked and where there is continuous supervision by staff for the purpose of
 37 modifying behavior.

- 1 (23) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North
2 Carolina Board of Licensed Professional Counselors.
- 3 (24) "Major physical injury" means damage caused to the body resulting in profuse bleeding or
4 contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of
5 normal neurological function (inability to move or coordinate movement); or any other painful
6 condition caused by such injury.
- 7 (25) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the
8 reasonably apparent circumstances require prompt decisions and actions in medical or other health
9 care, and the necessity of immediate health care treatment is so reasonably apparent that any delay
10 in the rendering of the treatment would seriously worsen the physical condition or endanger the
11 life of the client.
- 12 (26) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not
13 greater, considering probability and magnitude, than those ordinarily encountered in daily life or
14 during the performance of routine physical or psychological examinations or tests.
- 15 (27) "Minor client" means a person under 18 years of age who has not been married or who has not
16 been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the
17 armed forces.
- 18 (28) "Neglect" means the failure to provide care or services necessary to maintain the mental and
19 physical health of the client.
- 20 (29) "Normalization" means the principle of helping the client to obtain an existence as close to normal
21 as possible, taking into consideration the client's disabilities and potential, by making available to
22 him patterns and conditions of everyday life that are as close as possible to the norms and patterns
23 of the mainstream of society.
- 24 (30) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the
25 exception of staff providing respite services or personal care services, has a GED or high school
26 diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a
27 mh/dd/sa service. Upon hiring, an individualized supervision plan shall be developed and
28 supervision shall be provided by a qualified professional or associate professional with the
29 population served.
- 30 (31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent
31 by assuming the rights and obligations of a parent without formal adoption.
- 32 (32) "Physical Restraint" means the application or use of any manual method of restraint that restricts
33 freedom of movement, or the application or use of any physical or mechanical device that restricts
34 freedom of movement or normal access to one's body, including material or equipment attached or
35 adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic
36 hold or any other manner that restricts his or her movement constitutes manual restraint for that
37 client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory

restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.

(33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 28D, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.

(34) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.

(35) "Qualified professional" means, within the mh/dd/sas system of care, an individual who is:

(A) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or

(B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or

(C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or

(D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, pre- or post-bachelor's degree accumulated

- 1 mh/dd/sa experience with the population served, or a substance abuse professional who
 2 has four years of full-time, pre- or post-bachelor's degree accumulated supervised
 3 experience in alcoholism and drug abuse counseling.
- 4 (36) "Regional alcohol and drug abuse treatment center" means a state facility for substance abusers as
 5 specified in G.S. 122C-181(a)(3).
- 6 (37) "Regional mental retardation center" means a state facility for the mentally retarded as specified in
 7 G.S. 122C-181(a)(2).
- 8 (38) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S.
 9 122C-181(a)(1).
- 10 (39) "Representative payee" means the person, group, or facility designated by a funding source, such
 11 as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of
 12 the source on behalf of a client.
- 13 (40) "Research" means inquiry involving a trial or special observation made under conditions
 14 determined by the investigator to confirm or disprove an hypothesis or to explicate some principle
 15 or effect.
- 16 (41) "Respite client" means a client admitted to a mental retardation center for a short-term period,
 17 normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary
 18 interval of rest or relief for the client's regular caretaker.
- 19 (42) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the
 20 "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35)
 21 of this Rule.
- 22 (43) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a
 23 client's behavior. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment
 24 Program Maximum Security Ward in the Spruill Building at Dorothea Dix Hospital, the use of
 25 locked rooms is not considered seclusion for clients with criminal charges who are:
- 26 (A) undergoing pretrial evaluations ordered by a criminal court;
 27 (B) in treatment for restoration of capacity to proceed;
 28 (C) in treatment to reduce violence risk; or
 29 (D) considered to be an escape risk.
- 30 (44) "State Facility Director" means the chief administrative officer or manager of a state facility or his
 31 designee.
- 32 (45) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part
 33 of one's body or with an object.
- 34 (46) "Timeout" means the removal of a client from other clients to another space within the same
 35 activity area for the purpose of modifying behavior.
- 36 (47) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or
 37 managing a client's physical or mental problems.

- 1 (48) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be
 2 undertaken by the treatment team and includes any documentation of restriction of client's rights.
- 3 (49) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number
 4 and variety by discipline to adequately assess and address the identified needs of the client.
- 5 (50) "Unit" means an integral component of a state facility distinctly established for the delivery of one
 6 or more elements of service to which specific staff and space are assigned, and for which
 7 responsibility has been assigned to a director, supervisor, administrator, or manager.
- 8 (51) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5,
 9 Parts 2, 3, 4 or 5 of G.S. 122C.

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11 *History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147; S.L. 2017-32;*
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