



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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January 16, 2014

W. Denise Baker
Rule-making Coordinator
Commission for Mental Health, Development
Disabilities and Substance Abuse Services
3018 Mail Service Center
Raleigh, North Carolina 27699-3018

Re: 10A NCAC 27G .0504

Dear Ms. Baker:

At the Rules Review Commission's January 16, 2014 meeting, the Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to Rule 10A NCAC 27G .0504 based on lack of statutory authority, as there does not appear to be any authority for the Commission for Mental Health, Development Disabilities and Substance Abuse Services to alter the language of G.S. 122C-64 as set forth in Subparagraph (b)(5) of the Rule.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

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1 10A NCAC 27G .0504 is amended with changes as published in 27:05 NCR 562 as follows:

2
3 10A NCAC 27G .0504 CLIENT RIGHTS COMMITTEE LOCAL MANAGEMENT
4 ENTITY ~~CLIENT HUMAN RIGHTS COMMITTEE AND~~
5 PROVIDER ~~CLIENT HUMAN RIGHTS COMMITTEE~~

6 (a) ~~The area board shall bear ultimate responsibility for the assurance of client rights.~~

7 (b) ~~Each area board shall establish at least one Client Rights Committee, and may require that~~
8 ~~the governing body of a contract agency also establish a Client Rights Committee. The area board shall~~
9 ~~also develop and implement policy which delineates:~~

10 (1) ~~composition, size, and method of appointment of committee membership;~~

11 (2) ~~training and orientation of committee members;~~

12 (3) ~~frequency of meetings, which shall be at least quarterly;~~

13 (4) ~~rules of conduct for meetings and voting procedures to be followed;~~

14 (5) ~~procedures for monitoring the effectiveness of existing and proposed methods and~~
15 ~~procedures for protecting client rights;~~

16 (6) ~~requirements for routine reports to the area board regarding seclusion, restraint~~
17 ~~and isolation time out; and~~

18 (7) ~~other operating procedures.~~

19 (c) ~~The area board established Client Rights Committee shall oversee, for area operated services and area~~
20 ~~contracted services, implementation of the following client rights protections:~~

21 (1) ~~compliance with G.S. 122C, Article 3;~~

22 (2) ~~compliance with the provisions of 10A NCAC 27C, 27D, 27E, and 27F governing the protection~~
23 ~~of client rights, and 10A NCAC 26B governing confidentiality;~~

24 (3) ~~establishment of a review procedure for any of the following which may be brought by a client,~~
25 ~~client advocate, parent, legally responsible person, staff or others:~~

26 (A) ~~client grievances;~~

27 (B) ~~alleged violations of the rights of individuals or groups, including cases of~~
28 ~~alleged abuse, neglect or exploitation;~~

29 (C) ~~concerns regarding the use of restrictive procedures; or~~

30 (D) ~~failure to provide needed services that are available in the area program.~~

31 (d) ~~Nothing herein stated shall be interpreted to preclude or usurp the authority of a county Department of Social~~
32 ~~Services to conduct an investigation of abuse, neglect, or exploitation or the authority of the Governor's~~
33 ~~Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client~~
34 ~~rights.~~

35 (e) ~~If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry~~
36 ~~out the provisions of this Rule for the contract agency.~~

37 (f) ~~Each Client Rights Committee shall be composed of a majority of non area board members, with~~

38 a reasonable effort made to have all applicable disabilities represented, with consumer and family
39 member representation. Staff who serve on the committee shall not be voting members.

40 (g) ~~The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of~~
41 ~~its activities with the area board. Clients shall not be identified by name in minutes or in written or oral reports.~~

42 (h) ~~The area board Client Rights Committee shall review grievances regarding incidents which occur within~~
43 ~~a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to~~
44 ~~take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any,~~
45 ~~made by the contract agency shall be reported to the area director within 30 days of the initial report of the~~
46 ~~incident, and to the area board within 90 days of the initial report of the incident.~~

47 (a) ~~The Local Management Entity (LME) Local Management Entity—Managed Care Organization (LME-MCO)~~
48 ~~governing board shall establish at least one clients right human rights committee in its catchment area and require~~
49 ~~that provider governing bodies establish a client human rights committee according to paragraph (d) in this rule.~~
50 ~~For the purposes of this rule, “Provider” does not refer to mental health hospitals that are accredited or Medicare~~
51 ~~certified or to Licensed Independent Practitioners. The LME LME-MCO client human rights committee shall be~~
52 ~~responsible for client consumer rights protections in accordance with the LME-MCOs role as manager of public~~
53 ~~mental health, developmental disabilities, and substance abuse (mh/dd/sa) services. The provider client human~~
54 ~~rights committee shall be responsible for client consumer rights protection in accordance with the provider’s role as~~
55 ~~provider of services.~~

56 (b) ~~The LME LME-MCO governing board shall ratify develop and implement policies governing, client human~~
57 ~~rights committee membership and operating procedures including which delineate:~~

58 (1) ~~each LME LME-MCO committee shall be comprised of a majority of non-board members,~~
59 ~~with disability representation that reflects the clients consumers served and at least 50% of the~~
60 ~~membership shall consist of individuals who are either consumers or family members;~~

61 (2) ~~staff support to assist the committee to meet the requirements of the provisions of this~~
62 ~~rule;~~

63 (3) ~~minimize travel barriers for consumers and families to enhance participation;~~

64 (4) ~~LME LME-MCO staff members who serve on the committee shall not be voting members;~~

65 (5) ~~minimum and maximum committee size, composition, terms of office, quorum necessary to~~
66 ~~conduct business, method for open nomination process and method of appointment of~~
67 ~~committee membership including assurance of representation from each county; county for~~
68 ~~LME-MCOs that are seven counties or less, and at least 50% of the counties for LME-MCOs~~
69 ~~that are more than seven counties. Recruitment protocols shall be documented and shall~~
70 ~~reflect efforts to rotate counties in membership based upon geographical location and~~
71 ~~disability type so that all counties have equal representation when turnover on the committee~~
72 ~~occurs.~~

73 (6) ~~procedure for removal for good cause;~~

74 (7) ~~training and orientation of committee members at least annually;~~

- 75 (8) attendance requirements;
76 (9) frequency of meetings which shall be at least quarterly;
77 (10) location of meetings which shall be in North Carolina;
78 (11) rules of conduct for meetings and voting procedures to be followed;
79 (12) assurance against any conflicts of interest;
80 (13) compliance with confidentiality rules according to 10A NCAC 26B;
81 (14) the collection of information and the submission of reports requested by the LME LME-MCO, its
82 governing board or the Division of Mental Health, Developmental Disabilities and Substance
83 Abuse Services (DMH/DD/SAS) regarding the rights of consumers receiving public services; and
84 (15) other committee operating procedures required to protect ~~clients~~² consumers' rights and to assure
85 compliance with this rule.

86 (c) The duties of the LME LME-MCO ~~client~~ human rights committee shall be to work with the governing
87 board to oversee, for individuals receiving mh/dd/sa services in its catchment area, ~~client~~ consumer rights
88 protections including:

- 89 (1) assurance that the requirements of this rule and other client rights protections are reviewed
90 through routine provider monitoring in accordance with 10A NCAC 27G .0600
91 - .0610;
92 (2) compliance with G.S. 122C, Article 3 regarding ~~clients~~² consumer rights and advance
93 instruction;
94 (3) compliance with the protection of ~~clients~~² consumer rights in the community according to 10A
95 NCAC 27C, 27D, 27E and 27F;
96 (4) assurance of confidentiality according to 10A NCAC 26B;
97 (5) review of aggregate and descriptive complaint and appeal data in accordance with 10A NCAC
98 27G .7001 - .7004 and 10A NCAC 27I .0600 - .0609, respectively;
99 (6) apprise the LME-MCO governing board or a designated officer, at any time during the year,
100 of issues that relate to the assurance of ~~clients~~² consumers' rights; and
101 (7) authorize employees to collect and analyze information that the committee or the LME LME-
102 MCO governing board require to fulfill the requirements of this rule.

103 (d) Provider governing bodies shall establish ~~client~~ human rights committees through one of the options
104 below:

- 105 (1) a provider shall form its own committee(s); or
106 (2) multiple providers may enter into written agreements to form a committee(s) to meet the
107 requirements of this rule.

108 (e) The provider governing body shall adopt policies governing committee membership and
109 operating procedures ~~including~~ which delineate:

- 110 (1) each committee shall be comprised of a majority of non-board members, with disability
111 representation that reflects the ~~clients~~ consumers served and at least 50% of the membership

112 shall consist of individuals who are either consumers or family members;
113 (2) minimum and maximum committee size, composition, terms of office, quorum necessary to
114 conduct business, method for open nomination process and method of appointment of committee
115 membership;
116 (3) procedure for removal for good cause; and
117 (4) operation procedures of the committee including;
118 (A) attendance requirements;
119 (B) frequency of meetings at least quarterly;
120 (C) location of meetings which shall be in North Carolina;
121 (D) rules of conduct for meetings and voting procedures;
122 (E) training and orientation of committee members at least annually;
123 (F) assurance against any conflicts of interest;
124 (G) compliance with confidentiality rules according to 10A NCAC 26B;
125 (H) staff support to the committee required to meet the provisions of this rule;
126 (I) minimize travel barriers for consumers and families to enhance participation;
127 and
128 (J) other committee operating procedures required to protect ~~client~~ consumer rights and
129 to assure compliance with this rule.
130 (f) The provider committee shall assure ~~clients'~~ consumer rights protections including the
131 following:
132 (1) compliance with applicable requirements of this rule;
133 (2) compliance with G.S. 122C, Article 3 regarding ~~clients'~~ consumer rights and advance
134 instruction;
135 (3) compliance with incident reporting and other applicable ~~clients'~~ consumer rights
136 provisions of 10A NCAC 27G .0600 - .0610;
137 (4) compliance with the protection of ~~clients'~~ consumer rights in the community enumerated in
138 10A NCAC 27C, 27D, 27E and 27F;
139 (5) review of ~~clients'~~ consumer rights data including incidents, complaints, appeals and
140 investigations;
141 and
142 (6) apprise the governing body or a designated officer, at any time during the year, of issues
143 that relate to the assurance of ~~clients'~~ consumer rights.
144 (g) If an LME provides a service or services, the LME ~~client rights committee shall follow the~~
145 requirements of the provider ~~client rights committee for the LME service or services.~~
146 (h)-(g) The LME, LME-MCO ~~client~~ human rights committee and the provider(s) ~~client~~ human rights committee
147 shall work with state and local agencies to protect ~~client's~~ consumer rights for individuals receiving ~~md/dd/sa~~
148 mh/md/sa services and nothing herein stated shall be interpreted to preclude the legal authority of local and state

149 agencies including:

150 (1) a county Department of Social Services to conduct an investigation of abuse, neglect
151 or exploitation;

152 (2) North Carolina's protection and advocacy system to conduct investigations regarding alleged
153 violations of clients' consumer rights; and

154 (3) law enforcement agencies' investigations of criminal allegations that pertain to rights
155 violations.

156 ~~(j)(h)~~ The LME LME-MCO client human rights committee and the provider(s) client human rights committee shall
157 document initial orientation of committee members and annual training thereafter on topics to fulfill their duties as
158 described in this rule including:

159 (1) applicable North Carolina statutes and rules codified in the North Carolina
160 Administrative Code;

161 (2) the organization of the North Carolina public system for mental health,
162 developmental disabilities and substance abuse services;

163 (3) the duties of the local and state consumer family advisory committee according to G.S.
164 122C-170 and 171, respectively;

165 (4) principles of advocacy, self-determination and recovery; and

166 (5) customer service strategies.

167 ~~(j)(i)~~ A LME LME-MCO client human rights committee and a provider(s) client human rights committee shall
168 maintain meeting minutes. Clients Consumers shall not be identified by name in minutes or written oral reports.

169 ~~(k)~~ A provider(s) client rights committee shall complete an annual report and send it to the LME MCO(s)
170 with whom the provider has a service agreement(s).

171 ~~(l)(j)~~ A LME LME MCO client human rights committee shall complete an a summary annual report and send it
172 to the DMH/DD/SAS which shall publish an annual analysis of the LME LME MCO committee reports.

173 ~~(m)(k)~~ The reports report noted in paragraph (k) and (l) (j) of this rule shall be submitted on forms provided
174 by the DMH/DD/SAS.

175
176

177 *History Note: Authority G.S. 122C-64; 143B-147;*
178 *Eff. May 1, 1996;*
179 *Amended Eff ~~November 1, 2013.~~ December 1, 2014.*

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