

Burgos, Alexander N

Subject: FW: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

From: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Sent: Monday, December 18, 2023 10:01 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Whew... Thanks so much. Enjoy your day and have a wonderful holiday.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, December 18, 2023 10:01 AM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Do **not** appear, sorry.

To be clear, we have received no letters of objection to your rules.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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From: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Sent: Monday, December 18, 2023 9:59 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Do appear or do not appear??

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, December 18, 2023 9:56 AM
To: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Denise,

We **do appear** to have received any letters of objection on your rules.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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From: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Sent: Monday, December 18, 2023 9:41 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Hi Seth –

I hope you're doing well and enjoying your day. Just checking to see if any letters of objection were submitted in response to Rules 10A NCAC 27G .0104 or 28A .0102. I wanted to be sure before sending out a notice of their approval by the RRC. 😊

Thank you,
Denise

Burgos, Alexander N

Subject: FW: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, December 11, 2023 2:18 PM

To: Baker, Denise <Denise.Baker@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

Denise,

Thank you for your timely responses. At this point, I anticipate recommending approval of the revised version of the rules. I will let you know if anything comes up before the meeting.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: Revised Rules 10A NCAC 27G .0104 and 28F .0102
Attachments: 10A NCAC 28A .0102.docx; 10A NCAC 27G .0104.docx

From: Baker, Denise <Denise.Baker@dhhs.nc.gov>
Sent: Friday, December 8, 2023 12:27 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: Revised Rules 10A NCAC 27G .0104 and 28F .0102

Good morning –

Attached please find the aforementioned rules revised in response to Mr. Asher’s request for changes. Please let me know if you have questions or if additional changes are needed.

Thank you,
Denise

W. Denise Baker, M.A., L.P.A., Esq.
Team Leader, Legislative and Regulatory Affairs Team
Division of MH/DD/SAS
[NC Department of Health and Human Services](#)

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1 10A NCAC 27G .0104 is amended with changes as published in 38:01 NCR 7 as follows:

2
3 **10A NCAC 27G .0104 STAFF DEFINITIONS**

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

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

7 (a) graduate of a college or university with a masters degree in a human service field with less
8 than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the
9 population served, or a substance abuse professional with less than one year of full-time,
10 post-graduate degree accumulated supervised experience in alcoholism and drug abuse
11 counseling. Supervision shall be provided by a qualified professional with the population
12 served until the individual meets one year of experience. The supervisor and the employee
13 shall develop an individualized supervision plan upon hiring. The parties shall review the
14 plan annually; ~~or~~

15 (b) graduate of a college or university with a bachelor's degree in a human service field with
16 less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience
17 with the population served, or a substance abuse professional with less than two years of
18 full-time, post-bachelor's degree accumulated supervised experience in alcoholism and
19 drug abuse counseling. Supervision shall be provided by a qualified professional with the
20 population served until the individual meets two years of experience. The supervisor and
21 the employee shall develop an individualized supervision plan upon hiring. The parties
22 shall review the plan annually; ~~or~~

23 (c) graduate of a college or university with a bachelor's degree in a field other than human
24 services with less than four years of full-time, post-bachelor's degree accumulated
25 mh/dd/sa experience with the population served, or a substance abuse professional with
26 less than four years of full-time, post-bachelor's degree accumulated supervised experience
27 in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified
28 professional with the population served until the individual meets four years of experience.
29 The supervisor and the employee shall develop an individualized supervision plan upon
30 hiring. The parties shall review the plan annually; or

31 (d) registered nurse who is licensed to practice in the State of North Carolina by the North
32 Carolina Board of Nursing with less than four years of full-time accumulated experience
33 in mh/dd/sa with the population served. Supervision shall be provided by a qualified
34 professional with the population served until the individual meets four years of experience.
35 The supervisor and the employee shall develop an individualized supervision plan upon
36 hiring. The parties shall review the plan annually.

- 1 (2) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North
2 Carolina ~~Addictions Specialist Substance Abuse~~ Professional Practice Board.
- 3 (3) "Certified criminal justice addictions professional (CCJP)" means an individual who is certified as
4 such by the North Carolina ~~Addictions Specialist Substance Abuse~~ Professional Practice Board.
- 5 (4) "Certified ~~substance abuse counselor (CSAC)~~ alcohol and drug counselor" means an individual
6 who is certified as such by the North Carolina ~~Addictions Specialist Substance Abuse~~ Professional
7 ~~Certification~~ Practice Board.
- 8 (5) "Certified substance abuse prevention ~~consultant (CSAPC)~~ specialist" means an individual who is
9 certified as such by the North Carolina ~~Addictions Specialist Substance Abuse~~ Professional Practice
10 Board.
- 11 (6) "Clinical" means having to do with the ~~active direct treatment/habilitation~~ treatment or habilitation
12 of a client.
- 13 (7) "Clinical staff member" means a qualified professional or associate professional who provides
14 ~~active direct treatment/habilitation~~ treatment or habilitation to a client.
- 15 (8) ~~Clinical/professional~~ "Clinical or professional supervision" means regularly scheduled assistance
16 by a qualified professional or associate professional to a staff member who is providing direct,
17 therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that
18 each client receives treatment or habilitation ~~which~~ that is consistent with accepted standards of
19 practice and the needs of the client.
- 20 (9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work
21 Certification and Licensure Board.
- 22 (10) "Direct Support Professional" means an individual who has a GED or high school diploma hired to
23 provide intellectual disability, developmental disability, or traumatic brain injury services.
24 Supervision shall be provided by a qualified professional with experience with the population
25 served. The supervisor and the employee shall develop an individualized supervision plan upon
26 hiring and shall review it annually thereafter.
- 27 ~~(10)~~(11) "Director" means the individual who is responsible for the operation of the facility.
- 28 (12) "Family Partner" means an individual hired to provide direct engagement, support, and advocacy to
29 the family of each child and adolescent served in a Psychiatric Residential Treatment Facility. A
30 Family Partner shall meet the criteria for a Paraprofessional as defined in this Rule, have lived
31 experience as a primary caregiver for a child or adolescent with a mental health disorder, a substance
32 use disorder, intellectual disorder, or developmental disability. A Family Partner shall achieve
33 certification as a Family Peer Specialist by the National Federation of Families for Children with
34 Mental Illness within 18 months of hire and shall maintain active certification while in this role.
- 35 ~~(11)~~(13) "Licensed Clinical Addictions Specialist (LCAS)" means an individual who is licensed as such by
36 the North Carolina ~~Addictions Specialist Substance Abuse~~ Professional Practice Board.

- 1 ~~(12)~~(14) "Licensed clinician" means an individual with ~~full~~ clinical licensure awarded by the State of North
2 Carolina, as a physician, licensed psychologist, licensed psychological associate, licensed clinical
3 social worker, licensed professional counselor, licensed marriage and family therapist, or licensed
4 clinical addictions specialist. "Licensed clinician" also includes an individual with ~~full~~ clinical
5 licensure and certification as a certified clinical nurse specialist in psychiatric mental health
6 advanced practice, or a certified nurse practitioner in psychiatric mental health advanced practice.
- 7 ~~(13)~~(15) "Licensed Clinical Mental Health ~~professional~~ counselor (~~LPC~~)" (LCMHC)" means a counselor
8 who is licensed as such by the North Carolina Board of Licensed Clinical Mental Health
9 ~~Professional~~ Counselors.
- 10 ~~(14)~~(16) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered
11 nurse or as a licensed practical nurse.
- 12 ~~(15)~~(17) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception
13 of staff providing respite services or personal care services, has a GED or high school diploma;
14 ~~those or no GED or high school diploma,~~ employed prior to November 1, 2001 to provide a mh/dd/sa
15 ~~service. service are not required to have a GED or high school diploma.~~ Supervision shall be
16 provided by a qualified professional or associate professional with the population served. The
17 supervisor and the employee shall develop an individualized supervision plan upon hiring. The
18 parties shall review the plan annually.
- 19 ~~(16)~~(18) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North
20 Carolina and who has completed a training program in psychiatry accredited by the Accreditation
21 Council for Graduate Medical Education.
- 22 ~~(17)~~(19) "Psychologist" means an individual who is licensed to practice psychology in the State of North
23 Carolina as either a licensed psychologist or a licensed psychological associate.
- 24 ~~(18)~~(20) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited
25 by the Council on Medical Education and Registration of the American Health Information
26 Management Association and who is currently registered or accredited by the American Health
27 Information Management Association.
- 28 ~~(19)~~(21) "Qualified professional" means, within the mh/dd/sas system of ~~care:~~ care either:
- 29 (a) an individual who holds a license, provisional license, or certificate ~~certificate, registration~~
30 ~~or permit~~ issued by the governing board regulating a human service profession, ~~except~~
31 including a registered nurse who is licensed to practice in the State of North Carolina by
32 the North Carolina Board of Nursing who also has four years of full-time accumulated
33 experience in mh/dd/sa with the population served; ~~or~~
- 34 (b) a graduate of a college or university with a Masters degree in a human service field and
35 has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa
36 experience with the population served, or a substance abuse professional who has one year

1 of full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism
2 and drug abuse counseling; ~~or~~

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

8 (d) a graduate of a college or university with a bachelor's degree in a field other than human
9 services and has four years of full-time, pre- or post-bachelor's degree accumulated
10 supervised mh/dd/sa experience with the population served, or a substance abuse
11 professional who has four years of full-time, pre- or post-bachelor's degree accumulated
12 supervised experience in alcoholism and drug abuse counseling.

13 ~~(20)~~(22) "Qualified substance abuse prevention professional (QSAPP)" ~~means~~, within the mh/dd/sas system
14 of ~~care~~: care, means either:

15 (a) a graduate of a college or university with a masters degree in a human service field and has
16 one year of full-time, post-graduate degree accumulated supervised experience in
17 substance abuse prevention; ~~or~~

18 (b) a graduate of a college or university with a bachelor's degree in a human service field and
19 has two years of full-time, post-bachelor's degree accumulated supervised experience in
20 substance abuse prevention; ~~or~~

21 (c) a graduate of a college or university with a bachelor's degree in a field other than human
22 services and has four years of full-time, post bachelor's degree accumulated supervised
23 experience in substance abuse prevention; or

24 (d) a substance abuse prevention professional who is certified as a Certified ~~Substance Abuse~~
25 Prevention ~~Consultant~~ (CSAPC) Specialist by the North Carolina Addictions Specialist
26 ~~Substance Abuse~~ Professional Practice Board.

27
28 *History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; S.L. 2017-32; [2019-240;]*
29 *Eff. May 11, 1996;*
30 *Temporary Amendment Eff. January 1, 2001;*
31 *Temporary Amendment Expired October 13, 2001;*
32 *Temporary Amendment Eff. November 1, 2001;*
33 *Amended Eff. February 1, 2009; October 1, 2004; April 1, 2003- 2003;*
34 *Temporary Amendment Eff. March 1, 2019;*
35 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,*
36 *2019;*
37 *Temporary Amendment Expired Eff. December 10, 2019-2019;*

1 10A NCAC 28A .0102 is amended with changes as published in 38:01 NCR 9 as follows:

2
3 **10A NCAC 28A .0102 DEFINITIONS**

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

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

8 (1) "Abuse" means the same as defined in 42 CFR Part 488 Subpart E, which is incorporated by
9 reference, including subsequent amendments. The Code of Federal Regulations is available free of
10 charge at <https://www.govinfo.gov/app/collection/CFR>. ~~infliction of physical or mental pain or~~
11 ~~injury by other than accidental means; or unreasonable confinement; or the deprivation by an~~
12 ~~employee of services which are necessary to the mental and physical health of the client. Temporary~~
13 ~~discomfort that is part of an approved and documented treatment plan or use of a documented~~
14 ~~emergency procedure shall not be considered abuse.~~

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

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

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

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

- 1 professional with the population served until the individual meets four years of experience;
 2 or
 3 (D) registered nurse who is licensed to practice in the State of North Carolina by the North
 4 Carolina Board of Nursing with less than four years of full-time accumulated experience
 5 in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan
 6 shall be developed and reviewed annually. Supervision shall be provided by a qualified
 7 professional with the population served until the individual meets four years of experience.
- 8 (3) "Basic necessities" mean the essential items or substances needed to support life and health which
 9 include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access
 10 to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control
 11 seizures, diabetes and other like physical health conditions, and ~~frequent~~ access to social contacts.
- 12 (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North
 13 Carolina Addictions Specialist Professional Practice Substance Abuse Professional Certification
 14 Board.
- 15 (5) "~~Certified substance abuse counselor (CSAC)~~ alcohol and drug counselor" means an individual
 16 who is certified as such by the North Carolina Addictions Specialist Substance Abuse Professional
 17 Practice Certification Board.
- 18 (6) "Client" has the same meaning assigned in G.S. 133C-3. "Client" may also be referred to as a patient
 19 or resident.
- 20 ~~(6)~~(7) "Client record" means any record made of confidential ~~information.~~ information as defined G.S.
 21 122C-3.
- 22 ~~(7)~~(8) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in
 23 the position of Clinical Director, or his designee.
- 24 ~~(8)~~(9) "Clinically competent" means authorization by the State Facility Director for a qualified
 25 professional to provide specific ~~treatment/habilitation~~ treatment or habilitation services to clients
 26 based on the professional's education, training, experience, competence and judgment.
- 27 ~~(9)~~(10) "Consent" means concurrence by a client or his legally responsible person following receipt of
 28 information from the qualified professional who will administer the proposed treatment or
 29 procedure. Informed consent implies that the client or his legally responsible person was provided
 30 with information concerning proposed treatment, including both benefits and risks, in order to make
 31 an educated decision with regard to such treatment.
- 32 ~~(10)~~(11) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon,
 33 heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including
 34 alcohol.
- 35 (12) "Division" means the Division of State Operated Healthcare Facilities.
- 36 ~~(11)~~(13) "Division Director" means the Director of the Division or his designee.

- 1 ~~(12)~~(14) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing
2 abuse or injury to self or others, or when substantial property damage is occurring as a result of
3 unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed.
4 ~~[See Subparagraph (b)(25) of this Rule for definition of medical emergency].~~
- 5 ~~(13)~~(15) "Emergency surgery" means an operation or surgery performed in a medical ~~emergency~~ ~~[as~~
6 emergency, as defined in Subparagraph (b)(25) of this Rule] Rule, where informed consent cannot
7 be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would
8 seriously worsen the physical condition or endanger the life of the client.
- 9 ~~(14)~~(16) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit
10 is not barred for the purpose of modifying behavior.
- 11 ~~(15)~~(17) "Exploitation" means the same as defined in 42 CFR Part 483 Subpart B, which is incorporated by
12 reference, including subsequent amendments. The Code of Federal Regulations is available free of
13 charge at <https://www.govinfo.gov/app/collection/CFR>. ~~use of a client or her/his resources,~~
14 ~~including borrowing, taking or using personal property with or without her/his permission for~~
15 ~~another person's profit, business or advantage.~~
- 16 ~~(16)~~(18) "Forensic Division" means the ~~unit~~ units at Dorothea Dix Hospital any State hospital designated in
17 accordance with G.S. 122C-252 which serves clients who are:
18 (A) admitted for the purpose of evaluation for capacity to proceed to trial;
19 (B) found not guilty by reason of insanity;
20 (C) determined incapable of proceeding to ~~trial~~; ~~or~~ trial.
21 (D) ~~deemed to require a more secure environment to protect the health, safety and welfare of~~
22 ~~clients, staff and the general public.~~
- 23 ~~(17)~~(19) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation
24 that occurred within the ~~jurisdiction of the~~ state facility. A grievance does not include complaints
25 that can be resolved without delay by staff present. A complaint that is not resolved shall be filed
26 and processed in accordance with the requirements of 10A NCAC 28B .0203.
- 27 ~~(18)~~(20) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity
28 regarding the protection of client rights.
- 29 ~~(19)~~(21) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state
30 facility in which the client is being treated. The psychiatrist may be in private practice, ~~or~~ be
31 employed by another state facility, or be employed by a facility other than a state facility as defined
32 in G.S. 122C-3(14).
- 33 ~~(20)~~(22) "Interpreter services" means specialized communication services provided for the hearing impaired
34 by interpreters certified by the National Registry of Interpreters for the Deaf or the National
35 Association of the Deaf.
- 36 ~~(21)~~(23) "Involuntary client" means a person admitted to any regional psychiatric hospital or ~~alcoholic~~
37 rehabilitation center alcohol and drug abuse treatment center under the provisions of Article 5, Parts

1 7, 8 or 9 of G.S. 122C and ~~includes~~ includes, but it is not limited ~~to~~ to, clients detained pending a
2 district court hearing and clients involuntarily committed after a district court hearing. This term
3 shall also include individuals who are defendants in criminal actions and are being evaluated in a
4 state facility for mental responsibility or mental competency as a part of such criminal proceedings
5 as specified in G.S. ~~15A-1002~~ 15A-1002, unless a valid order providing otherwise is issued from a
6 court of competent ~~jurisdiction~~ jurisdiction, and the civil commitment of defendants found not guilty
7 by reason of insanity as specified in G.S. 15A-1321.

8 ~~(22)~~(24) "Isolation time-out" means the removal of a client to a separate room from which exit is barred ~~but~~
9 ~~which is not locked and~~ where there is ~~continuous~~ direct, uninterrupted supervision by staff for the
10 purpose of modifying behavior. "Isolation time-out" does not include precautions intended to
11 prevent transmission of a communicable disease.

12 (25) "Licensed Clinical Addiction Specialist (LCAS)" means an individual who is certified as such by
13 the North Carolina Addictions Specialist Professional Practice Board.

14 ~~(23)~~(26) "Licensed Clinical Mental health professional counselor (LPC)" (LCMHC)" means a counselor who
15 is licensed as such by the North Carolina Board of Licensed Clinical Mental Health Professional
16 Counselors.

17 ~~(24)~~(27) "Major physical injury" means damage caused to the body resulting in profuse bleeding or contusion
18 of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal
19 neurological function (inability to move or coordinate movement); or any other painful condition
20 caused by such injury.

21 ~~(25)~~(28) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the
22 ~~reasonably apparent~~ circumstances require ~~prompt~~ immediate decisions and actions in medical or
23 other health ~~care,~~ care related decisions and actions to prevent the worsening of the ~~necessity of~~
24 ~~immediate health care treatment is so reasonably apparent that any delay in the rendering of the~~
25 ~~treatment would seriously worsen the physical~~ condition, or endanger the ~~life~~ life, of the
26 client.

27 ~~(26)~~(29) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not
28 greater, considering probability and magnitude, than those ~~ordinarily~~ encountered in daily life or
29 during the performance of routine physical or psychological examinations or tests.

30 ~~(27)~~(30) "Minor client" means a person under 18 years of age who ~~has not been married or who has not been~~
31 ~~emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed~~
32 ~~forces.~~

33 (A) has not been married; or

34 (B) has not been emancipated by a decree issued by a court of competent jurisdiction; or

35 (C) is not a member of the armed forces.

- 1 (31) "Misappropriation of resident property" means the same as defined by 42 CFR Part 488 Subpart E,
2 incorporated by reference, including subsequent amendments. The Code of Federal Regulations is
3 available free of charge at <https://www.govinfo.gov/app/collection/CFR>.
- 4 ~~(28)~~(32) "Neglect" means the same as defined by 42 CFR Part 488 Subpart E, incorporated by reference,
5 including subsequent amendments. The Code of Federal Regulations is available free of charge at
6 <https://www.govinfo.gov/app/collection/CFR>. ~~failure to provide care or services necessary to~~
7 ~~maintain the mental and physical health of the client.~~
- 8 ~~(29)~~(33) "Normalization" means the principle of helping the client to obtain an existence as close to normal
9 as possible, taking into consideration the client's disabilities and potential, by making available to
10 him patterns and conditions of everyday life that are as close as possible to the norms and patterns
11 of the mainstream of society.
- 12 ~~(30)~~(34) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception
13 of staff providing respite services or personal care services, has a GED or high school diploma; an
14 individual or no GED or high school diploma, employed prior to November 1, 2001 to provide a
15 mh/dd/sa ~~service.~~ service is not required to have a GED or high school diploma. Upon hiring, an
16 individualized supervision plan shall be developed and supervision shall be provided by a qualified
17 professional or associate professional with the population served.
- 18 ~~(31)~~(35) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by
19 assuming the rights and obligations of a parent without formal adoption.
- 20 ~~(32)~~(36) "Physical Restraint" means the application or use of any manual method of restraint that restricts
21 freedom of movement, or the application or use of any physical or mechanical device that restricts
22 freedom of movement or normal access to one's body, including material or equipment attached or
23 adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic
24 hold or any other manner that restricts his or her movement constitutes manual restraint for that
25 client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory
26 restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts,
27 arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical
28 guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the
29 purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client
30 from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar
31 medical devices, and prosthetic devices or assistive technology which are designed and used to
32 increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist,
33 arm, shoulder or back for the purpose of inducing a client to walk to a safe location.
- 34 ~~(33)~~(37) "Protective devices" means an intervention ~~which that~~ provides support for ~~weak and feeble~~ clients
35 or enhances the safety of clients with specific medical or behavioral needs. ~~behaviorally disordered~~
36 ~~clients.~~ Such devices may include posey vests, geri-chairs or table top chairs to provide support and
37 safety for clients with physical ~~handicaps;~~ disabilities; devices such as helmets and mittens for

1 self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from
2 removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical
3 devices. As provided in Rule .0207 of Subchapter 28D, the use of a protective device for behavioral
4 control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.

5 ~~(34)~~(38) "Psychotropic medication" means medication with the primary function of treating mental illness,
6 personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants,
7 antianxiety agents and mood stabilizers.

8 ~~(35)~~(39) "Qualified professional" means, within the mh/dd/sas system of care, an individual who ~~is~~ is either:

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

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

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

24 (D) a graduate of a college or university with a bachelor's degree in a field other than human
25 services and has four years of full-time, pre- or post-bachelor's degree accumulated
26 mh/dd/sa experience with the population served, or a substance abuse professional who has
27 four years of full-time, pre- or post-bachelor's degree accumulated supervised experience
28 in alcoholism and drug abuse counseling.

29 ~~(36)~~(40) "Regional alcohol and drug abuse treatment center" means a state facility for persons with a
30 substance abuse disorder ~~substance abusers~~ as specified in G.S. 122C-181(a)(3).

31 ~~(37)~~(41) "Regional ~~mental retardation~~ developmental disability center" means a state facility for the ~~mentally~~
32 ~~retarded~~ developmentally disabled as specified in G.S. 122C-181(a)(2).

33 ~~(38)~~(42) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S.
34 122C-181(a)(1).

35 ~~(39)~~(43) "Representative payee" means the person, group, or facility designated by a funding source, such as
36 Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the
37 source on behalf of a client.

1 ~~(40)~~(44) "Research" means inquiry involving a trial or ~~special~~ observation made under conditions determined
2 by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.

3 ~~(41)~~(45) "Respite client" means a client admitted to a ~~mental retardation~~ developmental disability center or
4 a neuromedical treatment center for a short-term period, ~~normally~~ not to exceed 30 days. The
5 primary purpose of such admission is to provide a temporary interval of rest or relief for the client's
6 regular caretaker.

7 ~~(42)~~(46) "Responsible professional" shall have the meaning as specified in G.S. ~~122C-3~~ 122C-3; ~~except~~ the
8 "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35)
9 of this Rule.

10 ~~(43)~~(47) "Seclusion" means isolating a client in a separate locked room for the purpose of ~~controlling~~
11 managing a client's behavior. "Seclusion" does not include precautions intended to prevent
12 transmission of a communicable disease. In the Forensic Service, Pretrial Evaluation Unit and the
13 Forensic Treatment Program Maximum Security Ward in the ~~Spruill Building at Dorothea Dix~~
14 Central Regional Hospital, the use of locked rooms is not considered seclusion for clients with
15 criminal charges who are:

16 (A) undergoing pretrial evaluations ordered by a criminal court;
17 (B) in treatment for restoration of capacity to proceed;
18 (C) in treatment to reduce violence risk; or
19 (D) considered to be an escape risk.

20 ~~(44)~~(48) "State Facility Director" means the chief administrative officer or manager of a state facility or his
21 designee.

22 ~~(45)~~(49) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part
23 of one's body or with an object.

24 ~~(46)~~(50) "Timeout" means the removal of a client from other clients to another space within the same activity
25 area for the purpose of modifying behavior.

26 ~~(47)~~(51) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or
27 managing a client's physical or mental problems.

28 ~~(48)~~(52) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be
29 undertaken by the treatment team and includes any documentation of restriction of client's rights.

30 ~~(49)~~(53) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number
31 and variety by discipline to ~~adequately~~ assess and address the identified needs of the client.

32 ~~(50)~~(54) "Unit" means an integral component of a state facility ~~distinctly~~ established for the delivery of one
33 or more elements of service to which specific staff and space are assigned, and for which
34 responsibility has been assigned to a director, supervisor, administrator, or manager.

35 ~~(51)~~(55) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts
36 2, 3, 4 or 5 of G.S. 122C.

37

1 *History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147; S.L. 2017-32; [2019-240;]*
2 *Eff. October 1, 1984;*
3 *Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989;*
4 *Temporary Amendment Eff. January 1, 1998;*
5 *Amended Eff. April 1, 1999;*
6 *Temporary Amendment Eff. January 1, 2001;*
7 *Temporary Amendment Expired October 13, 2001;*
8 *Temporary Amendment Eff. November 1, 2001;*
9 *Amended Eff. April 1, 2003;*
10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,*
11 *2017;*
12 *Temporary Amendment Eff. March 1, 2019;*
13 *Temporary Amendment Expired Eff. December 10, 2019-2019;*
14 *Amended Eff. January 1, 2024.*

Burgos, Alexander N

From: Ascher, Seth M
Sent: Wednesday, November 29, 2023 8:14 PM
To: Baker, Denise
Cc: Burgos, Alexander N
Subject: RFC for Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services
Attachments: RFC Commission for Mental Health.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for the December 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 14, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on December 8, 2023.

Please let me know if you have any questions or concerns. Note that I will be out of town the remainder of this week with limited email access, so I may not respond until Monday.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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