

## **SUBCHAPTER 26C – OTHER GENERAL RULES**

### **SECTION .0100 – DESIGNATION OF FACILITIES FOR THE CUSTODY AND TREATMENT OF INVOLUNTARY CLIENTS**

#### **10A NCAC 26C .0101 SCOPE**

- (a) The purpose of this Section is to establish procedures by which 24-hour facilities may be designated as facilities for the custody and treatment of involuntary clients, pursuant to G.S. 122C-252.
- (b) This Section applies to all those state facilities, 24-hour facilities licensed under Chapter 122C of the General Statutes of North Carolina, and hospitals licensed under Chapter 131E of the General Statutes of North Carolina that wish to provide custody and treatment of those individuals involuntarily committed under Article 5, Parts 7 and 8 of Chapter 122C of the General Statutes.
- (c) Facilities that are licensed in accordance with G.S. 122C requirements in the following categories may request a designation to care for and treat individuals under petitions of involuntary commitment:
- (1) 10A NCAC 27G .3100 Nonhospital Medical Detoxification for Individuals who are Substance Abusers;
  - (2) 10A NCAC 27G .5000 Facility Based Crisis for Individuals of all Disability Groups; and
  - (3) 10A NCAC 27G .6000 Inpatient Hospital Treatment for Individuals who have Mental Illness or Substance Abuse Disorders.
- (d) Clients affected include those persons who are mentally ill, individuals with mental retardation or developmental disabilities and accompanying behavior disorders, and substance abusers as defined in G.S. 122C-3 who require custody and treatment before a district court hearing or after commitment.
- (e) Facilities designated as facilities for the custody and treatment of involuntary clients shall have adequate staffing and provide supervision to ensure the protection of the individual and the general public.

*History Note: Authority G.S. 122C-252;  
Temporary Rule Eff. January 1, 1986, for a Period of 32 Days to Expire on February 1, 1986;  
Eff. February 1, 1986;  
Amended Eff. March 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **10A NCAC 26C .0102 REQUEST FOR DESIGNATION**

- (a) A request for designation shall be made to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).
- (b) Each request shall include the following:
- (1) name and address of applicant;
  - (2) type of facility to be designated and type of service for which designation is requested;
  - (3) staffing levels of the facility;
  - (4) location of the facility;
  - (5) name of the administrator;
  - (6) status of license; and
  - (7) name and principal business address of holder of license.

*History Note: Authority G.S. 122C-252;  
Temporary Rule Eff. January 1, 1986, for a Period of 32 Days to Expire on February 1, 1986;  
Eff. February 1, 1986;  
Amended Eff. March 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **10A NCAC 26C .0103 REVIEW PROCESS**

- (a) Upon receipt of the request, the DMH/DD/SAS shall review the following regarding the facility prior to granting designation:
- (1) status of licensure by the Division of Health Service Regulation;

- (2) status of accreditation by an accrediting body, such as the Council on Accreditation, the Council on Quality and Leadership, the Council on Accreditation of Rehabilitation Facilities, or The Joint Commission, and review of the most recent survey report;
  - (3) adequacy of treatment program provided clients;
  - (4) consistency of staff coverage with proposed services;
  - (5) existence and adequacy of staff capability to manage the more dangerous and violent involuntary client as well as procedures for transfer to a more secure facility, where applicable;
  - (6) existence and adequacy of security procedures, including elopement and suicide prevention procedures;
  - (7) existence and adequacy of seclusion and restraint capabilities, policies and procedures;
  - (8) adequacy of staff training as to North Carolina laws pertaining to the involuntary committed client; and
  - (9) existence and adequacy of clients' rights policies and procedures.
- (b) The facility shall make information specified in Paragraph (a) of this Rule available to the DMH/DD/SAS and such other information relevant to the request process as the DMH/DD/SAS shall request.

*History Note: Authority G.S. 122C-252;  
 Temporary Rule Eff. January 1, 1986, for a Period of 32 Days to Expire on February 1, 1986;  
 Eff. February 1, 1986;  
 Amended Eff. March 1, 2009; April 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **10A NCAC 26C .0104 DESIGNATION**

- (a) The DMH/DD/SAS shall designate as facilities for the custody and treatment of involuntary clients those facilities that demonstrate both treatment capability and the capability to assure the safety of the client and the general public.
- (b) The DMH/DD/SAS shall notify the facility in writing of its designation status.
- (c) The DMH/DD/SAS shall notify the Clerks of Superior Court in that region of those facilities designated with copies to be sent to the local management entities. For purposes of this Rule, local management entity shall have the same definition as set forth in G.S. 122C-3(20b).
- (d) A list of designated facilities may be obtained from the DMH/DD/SAS at a cost to cover printing and postage or may be downloaded from the DMH/DD/SAS website at <http://www.dhhs.state.nc.us/ivc>.
- (e) A facility granted designation shall notify the DMH/DD/SAS of any changes in operation concerning any of the information submitted with the original request within seven calendar days of the change.
- (f) Designation may be terminated by the DMH/DD/SAS upon finding that the facility no longer meets the qualifications for designation and is no longer able to provide treatment.

*History Note: Authority G.S. 122C-252;  
 Temporary Rule Eff. January 1, 1986, for a Period of 32 Days to Expire on February 1, 1986;  
 Eff. February 1, 1986;  
 Amended Eff. March 1, 2009;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **10A NCAC 26C .0105 APPEAL**

Any facility denied designation or whose designation has been terminated under this Section may appeal pursuant to the contested case process set forth in G.S. 150B, Article 3.

*History Note: Authority G.S. 122C-252; 150B-23;  
 Temporary Rule Eff. January 1, 1986, for a Period of 32 Days to Expire on February 1, 1986;  
 Eff. February 1, 1986;  
 Amended Eff. March 1, 2009; April 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **SECTION .0200 - RESEARCH**

### **10A NCAC 26C .0201 MONITORING OF RESEARCH**

All research carried out in any of the Division of mental health's facilities, or in connection with its program, shall be closely monitored for quality, the interest of clients' rights and welfare, confidentiality and optimal treatment.

*History Note: Authority G.S. 143B-147;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0202 PROTOCOL**

Before any investigation is launched involving the Division's clients, their records, or a mental health program's records, a written protocol of the planned study shall be submitted to the chief executive offices of the institution or area program. The protocol shall contain the following:

- (1) identification of project and investigator;
- (2) abstract, containing a short description;
- (3) statement of objectives and rationale;
- (4) description of methodology, including projected number of people and time involved;
- (5) measures taken to protect subjects' interests, including, if necessary, informed consent;
- (6) statement of interests of involved mental health programs; and
- (7) plans for dissemination and disposition of findings.

*History Note: Authority G.S. 143B-147;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0203 ADVICE OF RESEARCH COMMITTEE**

The chief executive officer of the institution or area program before approving or rejecting a research project shall seek the advice of a research committee. The Committee may recommend acceptance, acceptance with revision, or rejection. The recommendation shall carefully weigh the expected gain for future mental health clients against the possible risk for persons involved in the study.

*History Note: Authority G.S. 143B-147;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0204 RESEARCH COMMITTEE**

It shall be the policy of the Division of mental health services to have a sufficient number of research committees all over the state, so that each program has easy access to a committee. Each committee's procedures shall be recorded and written records kept in a specially designated file. The principal investigator and the research committee shall ensure that projects in progress are reviewed at least every three months or whenever a change in method is planned. Each research committee is charged with furthering as well as monitoring any project.

*History Note: Authority G.S. 143B-147;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0205 YEARLY RESEARCH STATEMENT**

The Division of mental health, through its head of research, shall receive once a year from each region a statement of all research projects which have been started, continued or terminated in that region. Each region's efforts shall be supported by a research consultant from the Division's office, who shall also be a member of each research

committee in the region. The research consultants shall assist in the formulation of research plans, wherever this may become necessary.

*History Note: Authority G.S. 143B-147;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **SECTION .0300 - DEATH REPORTING**

### **10A NCAC 26C .0301 SCOPE**

(a) For purposes of this Section, facilities licensed in accordance with G.S. 122C, Article 2, state facilities operating in accordance with G.S. 122C Article 4, Part 5 and inpatient psychiatric units of hospitals licensed under G.S. 131E shall report client deaths to the Division of Health Service Regulation.

(b) Client deaths occurring in facilities not licensed in accordance with G.S. 122C, Article 2 or state facilities operating in accordance with G.S. 122C, Article 4, Part 5 shall be reported to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

*History Note: Authority G.S. 122C-26; 122C-131;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0302 DEFINITIONS**

In addition to the definitions contained in G.S. 122C-3 and 10A NCAC 27G .0103, the following definitions shall apply with respect to this Section:

- (1) "Accident" means an unexpected, unnatural or irregular event contributing to a client's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement (escape, run away from or abscond), exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.
- (2) "Immediately" means at once, at or near the present time, without delay.
- (3) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

*History Note: Authority G.S. 122C-26; 122C-131;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

### **10A NCAC 26C .0303 REPORTING REQUIREMENTS**

(a) Upon learning of the death of a client currently receiving services, a facility shall file a report in accordance with G.S. 122C-31 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for deaths occurring within seven days of physical restraint or seclusion of a client.

(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.

(d) Written notice may be submitted in person, telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraph (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

- (1) Reporting facility: name, address, county, license number (if applicable); Medicare/Medicaid provider number (if applicable); facility director and telephone number; name and title of person

- preparing report; first person to learn of death and first staff to receive report of death; facility telephone number; and date and time report prepared;
- (2) Client information: name, client record number, unit/ward (if applicable); Medicare/Medicaid number (if applicable); date of birth, age, height, weight, sex, race, competency, admitting diagnoses, primary or secondary mental illness, developmental disability or substance abuse diagnoses, primary/secondary physical illness/conditions diagnosed prior to death, date(s) of last two medical examinations (if known), date of most recent admission to a state-operated psychiatric, developmental disability or substance abuse facility (if known); and date of most recent admission to an acute care hospital for physical illness (if known);
  - (3) Circumstances of death: place and address where decedent died; date and time death was discovered; physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage; whether or not decedent was in seclusion at the time of death or within seven days of death and if so, a description of the seclusion episode(s); and a description of the events surrounding the death; and
  - (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.
- (e) The facility shall submit a written report, using a form pursuant to G.S. 122C-31(f). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.
- (f) In addition, the facility shall:
- (1) notify the division specified in Rule .0301 of this Section, immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
  - (2) submit to the division specified in Rule .0301 of this Section, immediately after it becomes available, any information required by this Rule that was previously unavailable; and
  - (3) provide, upon request by the division specified in Rule .0301 of this Section, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.
- (g) With regard to any client death under circumstances described in G.S. 130A-383, a facility shall notify law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the division specified in Rule .0301 of this Section, upon request.
- (h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.
- (i) If the circumstances surrounding any client death reveal reason to believe that one or more disabled adults at the facility may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 108A, Article 6.
- (j) If the circumstances surrounding any client death reveal reason to believe that one or more juveniles at the facility may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 7B, Article 3.

*History Note:* Authority G.S. 122C-26; 122C-131;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

## **SECTION .0400 - MISCELLANEOUS**

### **10A NCAC 26C .0401 LIAISON WITH CITIZEN GROUPS**

The Division shall consult and maintain liaison with citizen advocacy groups in the area of mental health services.

*History Note:* Authority G.S. 143B-147;  
Eff. February 1, 1976;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **10A NCAC 26C .0402 STANDARDIZED FORMS AND PROCESSES**

(a) Pursuant to G.S. 122C-112.1(a)(32) this Rule sets forth the standardized forms and processes to be used by local management entities (LMEs) and providers in support of LME system management functions. LMEs and providers shall use the standardized forms and processes provided by the Secretary for system management functions including:

- (1) person-centered plan;
- (2) screening/triage/referral interview;
- (3) claims processing;
- (4) contract;
- (5) memorandum of agreement;
- (6) quality improvement plan;
- (7) strategic plan;
- (8) local business plan;
- (9) authorization of state funded services;
- (10) endorsement of a provider of service; and
- (11) letter of support for residential facilities.

(b) All standardized forms and processes shall be implemented on a statewide basis.

(c) No standardized form or process shall require more information than is necessary to comply with state or federal reporting requirements.

(d) A standardized form or process shall not be altered by a LME or provider.

(e) An LME shall not add any additional requirements upon providers that are not included in a standardized process.

*History Note: Authority G.S. 122C-112.1(a)(32); S.L. 2006-142, Section 4(m); Eff. May 1, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **SECTION .0500 – SUMMARY SUSPENSION AND REVOCATION**

##### **10A NCAC 26C .0501 SCOPE**

This Section sets forth rules governing summary suspension and revocation of authorization to receive public funding for providing mental health, developmental disabilities and substance abuse services.

*History Note: Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1; Temporary Adoption Eff. July 1, 2003; Eff. July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

##### **10A NCAC 26C .0502 DEFINITIONS**

As used in the rules in this Section, the following terms have the meanings specified:

- (1) "Authorization to receive public funding for providing services" means approval from the Department to receive funding through one or more of the following mechanisms;
  - (a) enrollment of a provider with Medicaid, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(D), and 42 C.F.R. 440.180 and SL 2002-164; or
  - (b) compliance with contract or funding requirements for state or federal funds, as defined in 10A NCAC 27A, Sections .0100 through .0200.
- (2) "Funding authority" means the state agency that is responsible for administering state or federal funds, or the area authority or county program that is responsible for administering local funds.
- (3) "Provider" means any person or entity authorized to provide publicly funded services.
- (4) "Services" means publicly funded mental health, developmental disabilities and substance abuse services.

- (5) "Statutes or rules" mean the North Carolina General Statutes, North Carolina Administrative Code.
- (6) "Substantial failure to comply" means evidence of one or more of the following:
  - (a) the provider has not addressed issues that endanger the health, safety or welfare of clients receiving services;
  - (b) the provider has been convicted of a crime specified in G.S. 122C-80;
  - (c) the provider has not made available and assessable all sources of information necessary to complete the monitoring processes set out in G.S. 122C-112.1;
  - (d) the provider has created or altered documents to avoid sanctions;
  - (e) the provider has not submitted, revised or implemented a plan of correction in the specified timeframes; or
  - (f) the provider has not removed the cause of a summary suspension in the specified timeframes.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1;  
Temporary Adoption Eff. July 1, 2003;  
Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **10A NCAC 26C .0503 SUMMARY SUSPENSION**

- (a) The DMH/DD/SAS shall issue a written order of agency-wide, site-limited or service-specific summary suspension of state or federal mental health, developmental disabilities and substance abuse services funds and shall refer findings concerning licensed providers for investigation by the licensing agency, when it determines that a client's health, safety or welfare is in immediate jeopardy, as defined in 10A NCAC 27G .0602(5). Where funding is authorized by other public sources, the DMH/DD/SAS shall refer its findings to the funding authority and shall refer findings concerning licensed providers for investigation by the licensing agency, when it determines that a client's health, safety or welfare is in immediate jeopardy. The DMH/DD/SAS shall include its findings in the order or referral.
- (b) An order of summary suspension shall be effective on the date specified in the order or on the date of the first attempt to deliver notification at the last known address of the provider, whichever is later.
- (c) The order shall specify a date by which the provider shall remove the cause for the emergency action and authorization for funding shall resume.
- (d) The provider may contest the order by requesting a contested case hearing pursuant to G.S. 150B. Requesting a contested hearing does not stay the order for summary suspension.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1; 150B-21.1;  
Temporary Adoption Eff. July 1, 2003;  
Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **10A NCAC 26C .0504 REVOCATION**

- (a) The DMH/DD/SAS shall revoke authorization to receive funding to provide services utilizing state or federal mental health, developmental disabilities and substance abuse services funds and make a recommendation to DMA to revoke enrollment for Medicaid, when it finds that there has been substantial failure to comply with statutes or pursuant to Rule .0502(5) of this Section. Where funding is authorized by other public sources, the DMH/DD/SAS shall refer its findings to the funding authority. Regardless of funding authority, the DMH/DD/SAS shall refer findings concerning licensed providers for investigation by the licensing agency when it determines there has been substantial failure to comply with statutes or rules. The DMH/DD/SAS shall include its findings in the revocation order, recommendation or referral.
- (b) Before revoking authorization, making a recommendation to the Division of Medical Assistance (DMA) or making a referral to another funding authority or licensing agency, the DMH/DD/SAS shall provide written notice to the provider stating that continued failure to comply with statutes or rules will result in the revocation, recommendation and referral.

- (c) The DMH/DD/SAS shall give the provider written notice of the revocation order, the recommendation to DMA or referral of findings to the funding authority or licensing agency, as applicable. The written notice shall include the reasons for the action, and the grievance/appeal process or contested case procedures pursuant to G.S. 150B.
- (d) The revocation notice shall be effective on the date specified in the notice or on the date of the first attempt to deliver notification at the last known address of the provider, whichever is later.
- (e) The DMH/DD/SAS shall provide to DMA or other funding authority a written notice of the revocation order and a recommendation to revoke Medicaid enrollment. The DMH/DD/SAS shall also provide a copy of the notice and recommendation to the licensing agency, as applicable.
- (f) The provider may contest the order by requesting a contested case hearing pursuant to G.S. 150B. Requesting a contested case hearing does not stay the revocation order.

*History Note:* Authority G. S. 122C-112.1; 143B-139.1; 150B-21.1;  
 Temporary Adoption Eff. July 1, 2003;  
 Eff. July 1, 2004;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

**SECTION .0600 – REMOVAL OF LOCAL MANAGEMENT ENTITY FUNCTIONS**

- 10A NCAC 26C .0601 SCOPE**
- 10A NCAC 26C .0602 DEFINITIONS**
- 10A NCAC 26C .0603 NOTICE OF DEFICIENT PERFORMANCE**
- 10A NCAC 26C .0604 PLAN OF CORRECTION REQUIREMENTS**
- 10A NCAC 26C .0605 FOCUSED TECHNICAL ASSISTANCE**
- 10A NCAC 26C .0606 REMOVAL OF LME FUNCTION**

*History Note:* Authority G.S. 122C-115.4(f)(3);  
 Eff. May 1, 2008;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
 Repealed Eff. October 3, 2023 pursuant to G.S. 150B-21.7.

**SECTION .0700 – COUNTY DISENGAGEMENT FROM A LOCAL MANAGEMENT ENTITY-MANAGED CARE ORGANIZATION**

- 10A NCAC 26C .0701 SCOPE**
- 10A NCAC 26C .0702 COUNTY REQUEST TO DISENGAGE FROM A LOCAL MANAGEMENT ENTITY-MANAGED CARE ORGANIZATIONSCOPE**
- 10A NCAC 26C .0703 SECRETARY RESPONSE TO COUNTY REQUESTS TO DISENGAGE FROM A LOCAL MANAGEMENT ENTITY-MANAGED CARE ORGANIZATION**

*History Note:* Authority G.S. 122C-115;  
 Eff. February 1, 2017;  
 Repealed Eff. October 3, 2023 pursuant to G.S. 150B-21.7.