

10A NCAC 26D .1206 INVOLUNTARY REFERRALS AND TRANSFERS

(a) Involuntary referrals and transfers to residential or inpatient units shall occur only if the attending clinician determines that:

- (1) a client requires treatment services not available at his or her current service delivery site; and
- (2) a transfer over the client's objections is required.

(b) Non-emergency involuntary referrals:

- (1) If a qualified professional determines that the following conditions exist:
 - (A) a diagnosable mental disorder; and
 - (B) determination is made that outpatient services are not effective treatment for the client; and
- (2) the professional has given the client a written notice of a referral for transfer and has explained to the client his or her rights in accordance with Rule .1207 of this Section; then
- (3) the following steps shall be taken if the client does not voluntarily consent to the referral and transfer:
 - (A) the client shall be informed of the time, date and place of a hearing;
 - (B) the Chief of Psychiatry or his or her designee shall contact the hearing officer to arrange a hearing; and
 - (C) a client advisor shall be appointed and a hearing conducted in accordance with the procedures specified in this Rule.

(c) Emergency involuntary referrals:

- (1) Such referrals shall be implemented only:
 - (A) if a client has a diagnosable mental disorder; and either:
 - (i) presents a substantial risk of harm to himself or others, as manifested by recent overt acts or expressed threats of violence; or
 - (ii) is so unable to care for his or her own personal health and safety as to create a substantial risk of harm to himself; and
 - (B) the Chief of Psychiatry has made a determination that outpatient services are not effective treatment for the client's condition.
- (2) Such referrals shall be made by the mental health staff, the unit physician, nurse, or officer in charge after consultation with the designated mental health staff of the receiving unit.
- (3) The officer in charge shall authorize a transfer only under the following conditions and if the officer determines:
 - (A) the emergency referral criteria have been met; and
 - (B) efforts to contact the referring mental health professional have failed.

(d) A client who is transferred because he or she meets the criteria of an emergency involuntary referral shall be afforded a hearing at the receiving unit within 10 days of admission. This hearing will follow the same procedures as those required by Paragraph (b) of this Rule.

(e) Client advisors:

- (1) Each client referred for a hearing shall have an advisor appointed to assist him or her in preparing for the hearing.
- (2) Each area administrator or institution head shall be responsible for appointing advisors for all units within his or her jurisdiction.
- (3) Client advisors shall be free to advise the client independently and to act solely in his or her behalf, and shall not be subject to any harassment, discipline, or coercion in connection with such advice for the client.
- (4) Ex parte attempts to influence the decision of the hearing officer shall be prohibited.

(f) Hearing officers: The Chief of Psychiatry shall recommend and the Director of the Division of Prisons shall appoint persons to serve as hearing officers who shall:

- (1) be qualified professionals who are neutral and independent;
- (2) have the authority to refuse to transfer an client if they determine that such a transfer is not justified.
- (3) ensure and document that an client advisor has been assigned;
- (4) conduct a hearing that follows the procedures specified in this Rule in a fair and impartial manner; and
- (5) determine from evidence presented whether the criteria for emergency or non-emergency referrals have been met.

(g) Hearing procedures:

- (1) The hearing shall be conducted no sooner than 48 hours after the time the client is given written notice that he or she is being considered for a referral to a residential or inpatient unit; however, the client has the right to waive the 48-hour notice.
- (2) The hearing officer shall determine the time, place, and site of the hearing.
- (3) The hearing officer shall consider all relevant and non-repetitive evidence justifying or disputing the involuntary transfer and that:
 - (A) the client has a diagnosable mental disorder;
 - (B) the client requires services that are not currently available on an outpatient basis; and
 - (C) the unit to which the client is to be transferred is better able to provide the needed treatment or habilitation services than is the currently assigned housing unit.
- (4) A copy of the referral form, as well as other relevant written documents, shall be entered as evidence.
- (5) All written documents or verbal information are to be considered confidential, in accordance with applicable law and Department policy.
- (6) The client shall not have direct access to his or her client record; however, the client advisor may:
 - (A) review the client's record presented at the hearing; and
 - (B) consult with the client about its use at the hearing and any other matters which could be relevant at the hearing, including the questioning of all witnesses.
- (7) The client who is being considered for transfer or his or her advisor may question any witnesses for the State, including mental health or mental retardation professionals.
- (8) The client may also present witnesses in his or her own behalf with limitations that include:
 - (A) a reasonable number of witnesses will be allowed at the discretion of the Hearing Officer;
 - (B) testimony may be received by conference telephone call if the hearing is conducted away from the client's assigned unit;
 - (C) written statements may be entered in lieu of direct testimony; and
 - (D) specific client witnesses may be excluded from direct testimony if a justifiable security risk, including threats of harm or inmate escape, as determined by a unit superintendent, or designee, would occur were they brought to the hearing site.
- (9) The hearing officer shall:
 - (A) document the results of the hearing, summarizing the evidence presented and the rationale for his or her decision;
 - (B) communicate the results of the hearing to the client and staff; and
 - (C) ensure that a copy of relevant documents is placed in the client record.
- (10) The decision to transfer involuntarily shall be valid throughout the duration of the stay at any residential or inpatient unit. There shall be a review of the need for continued treatment or habilitation every 30 days.
- (11) A client may be transferred to another like unit without a rehearing; however, if he or she is discharged from residential or inpatient services, a rehearing shall be required prior to readmission to that level of service.
- (12) At the request of the client, his or her case shall be reviewed by a Hearing Officer within 90 days after the initial hearing to determine whether the assignment to the residential or inpatient unit will be extended or terminated. Subsequent reviews by a Hearing Officer shall take place each 180 days if requested by the client.

(h) The receiving unit shall be responsible for notifying the client of his or her right to inform his or her family of the transfer, and such notice shall be provided within 24 hours of the admission to the receiving unit.

*History Note: Authority G.S. 148-19(d);
Eff. January 4, 1994;
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