

SUBCHAPTER 27D – GENERAL RIGHTS

SECTION .0100 – GENERAL POLICIES AND PROCEDURES

10A NCAC 27D .0101 POLICY ON RIGHTS RESTRICTIONS AND INTERVENTIONS

- (a) The governing body shall develop policy that assures the implementation of G.S. 122C-59, G.S. 122C-65, and G.S. 122C-66.
- (b) The governing body shall develop and implement policy to assure that:
- (1) all instances of alleged or suspected abuse, neglect or exploitation of clients are reported to the County Department of Social Services as specified in G.S. 108A, Article 6 or G.S. 7A, Article 44; and
 - (2) procedures and safeguards are instituted in accordance with sound medical practice when a medication that is known to present serious risk to the client is prescribed. Particular attention shall be given to the use of neuroleptic medications.
- (c) In addition to those procedures prohibited in 10A NCAC 27E .0102(1), the governing body of each facility shall develop and implement policy that identifies:
- (1) any restrictive intervention that is prohibited from use within the facility; and
 - (2) in a 24-hour facility, the circumstances under which staff are prohibited from restricting the rights of a client.
- (d) If the governing body allows the use of restrictive interventions or if, in a 24-hour facility, the restrictions of client rights specified in G.S. 122C-62(b) and (d) are allowed, the policy shall identify:
- (1) the permitted restrictive interventions or allowed restrictions;
 - (2) the individual responsible for informing the client; and
 - (3) the due process procedures for an involuntary client who refuses the use of restrictive interventions.
- (e) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policy that assures compliance with Subchapter 27E, Section .0100, which includes:
- (1) the designation of an individual, who has been trained and who has demonstrated competence to use restrictive interventions, to provide written authorization for the use of restrictive interventions when the original order is renewed for up to a total of 24 hours in accordance with the time limits specified in 10A NCAC 27E .0104(e)(10)(E);
 - (2) the designation of an individual to be responsible for reviews of the use of restrictive interventions; and
 - (3) the establishment of a process for appeal for the resolution of any disagreement over the planned use of a restrictive intervention.
- (f) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policies which require that:
- (1) positive alternatives and less restrictive interventions are considered and are used whenever possible prior to the use of more restrictive interventions; and
 - (2) consideration is given to the client's physical and psychological well-being before, during and after utilization of a restrictive intervention, including:
 - (A) review of the client's health history or the comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;
 - (B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of physical restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;
 - (C) continuous monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being during the use of manual restraint; and
 - (D) continued monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being for a minimum of 30 minutes subsequent to the termination of a restrictive intervention; and
 - (3) following the utilization of a restrictive intervention, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, as specified in 10A NCAC 27E .0104, to

eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted, as appropriate, to the level of cognitive functioning of the client.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Amended Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

10A NCAC 27D .0102 SUSPENSION AND EXPULSION POLICY

- (a) Each client shall be free from threat or fear of unwarranted suspension or expulsion from the facility.
- (b) The governing body shall develop and implement policy for suspension or expelling a client from a service. The policy shall address the criteria to be used for an suspension, expulsion or other discharge not mutually agreed upon and shall establish documentation requirements that include:
 - (1) the specific time and conditions for resuming services following suspension;
 - (2) efforts by staff of the facility to identify an alternative service to meet the client's needs and designation of such service; and
 - (3) the discharge plan, if any.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

10A NCAC 27D .0103 SEARCH AND SEIZURE POLICY

- (a) Each client shall be free from unwarranted invasion of privacy.
- (b) The governing body shall develop and implement policy that specifies the conditions under which searches of the client or his living area may occur, and if permitted, the procedures for seizure of the client's belongings, or property in the possession of the client.
- (c) Every search or seizure shall be documented. Documentation shall include:
 - (1) scope of search;
 - (2) reason for search;
 - (3) procedures followed in the search;
 - (4) a description of any property seized; and
 - (5) an account of the disposition of seized property.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

10A NCAC 27D .0104 PERIODIC INTERNAL REVIEW

- (a) The governing body shall assure the conduct, no less than every three years, of a compliance review in each of its facilities regarding the implementation of Client Rights Rules as specified in 10A NCAC 27C, 27D, 27E and 27F.
- (b) The review shall assure that:
 - (1) there is compliance with applicable provisions of the federal law governing advocacy services to the mentally ill, as specified in the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319) and amended by Public Law 100-509 (1988); and
 - (2) there is compliance with applicable provisions of the federal laws governing advocacy services to the developmentally disabled, the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et. seq.
- (c) The governing body shall maintain the three most recent written reports of the findings of such reviews.

History Note: Authority G.S. 122C-51; 143B-147;

Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

SECTION .0200 -INFORMING CLIENTS AND STAFF OF RIGHTS

10A NCAC 27D .0201 INFORMING CLIENTS

- (a) A written summary of client rights as specified in G.S. 122C, Article 3 shall be made available to each client and legally responsible person.
- (b) Each client shall be informed of his right to contact the Governor's Advocacy Council for Persons with Disabilities (GACPD), the statewide agency designated under federal and State law to protect and advocate the rights of persons with disabilities.
- (c) Each client shall be informed regarding the issues specified in Paragraph (d) and, if applicable in Paragraph (e), of this Rule, upon admission or entry into a service, or
- (1) in a facility where a day/night or periodic service is provided, within three visits; or
 - (2) in a 24-hour facility, within 72 hours. Explanation shall be in a manner consistent with the client's or legally responsible person's level of comprehension.
- (d) In each facility, the information provided to the client or legally responsible person shall include;
- (1) the rules that the client is expected to follow and possible penalties for violations of the rules;
 - (2) the client's protections regarding disclosure of confidential information, as delineated in G.S. 122C-52 through G.S. 122C-56;
 - (3) the procedure for obtaining a copy of the client's treatment/habilitation plan; and
 - (4) governing body policy regarding:
 - (A) fee assessment and collection practices for treatment/habilitation services;
 - (B) grievance procedures including the individual to contact and a description of the assistance the client will be provided;
 - (C) suspension and expulsion from service; and
 - (D) search and seizure.
- (e) In addition, for the client whose treatment/habilitation is likely to include the use of restrictive interventions, or for the client in a 24-hour facility whose rights as specified in G.S. 122C-62 (b) or (d) may be restricted, the client or legally responsible person shall also be informed:
- (1) of the purposes, goals and reinforcement structure of any behavior management system that is allowed;
 - (2) of potential restrictions or the potential use of restrictive interventions;
 - (3) of notification provisions regarding emergency use of restrictive intervention procedures;
 - (4) that the legally responsible person of a minor or incompetent adult client may request notification after any occurrence of the use of restrictive intervention;
 - (5) that the competent adult client may designate an individual to receive notification, in accordance with G.S. 122C-53(a), after any occurrence of the use of restrictive intervention; and
 - (6) of notification provisions regarding the restriction of client rights as specified in G.S. 122C-62(e).
- (f) There shall be documentation in the client record that client rights have been explained.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

10A NCAC 27D .0202 INFORMING STAFF

The governing body shall develop and implement policy to assure that all staff are kept informed of the rights of clients as specified in 122C, Article 3, all applicable rules, and policies of the governing body. Documentation of receipt of information shall be signed by each staff member and maintained by the facility.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.

SECTION .0300 - GENERAL CIVIL, LEGAL AND HUMAN RIGHTS

10A NCAC 27D .0301 SOCIAL INTEGRATION

Each client in a day/night or 24-hour facility shall be encouraged to participate in appropriate and generally acceptable social interactions and activities with other clients and non-client members of the community. A client shall not be prohibited from such social interactions unless restricted in writing in the client record in accordance with G.S. 122C-62(e).

*History Note: Authority G.S. 122C-51; 122C-62; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.*

10A NCAC 27D .0302 CLIENT SELF-GOVERNANCE

In a day/night or 24-hour facility, the governing body shall develop and implement policy which allows client input into facility governance and the development of client self-governance groups.

*History Note: Authority G.S. 122C-51; 122C-58; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.*

10A NCAC 27D .0303 INFORMED CONSENT

(a) Each client, or legally responsible person, shall be informed, in a manner that the client or legally responsible person can understand, about:

- (1) the alleged benefits, potential risks, and possible alternative methods of treatment/habilitation; and
- (2) the length of time for which the consent is valid and the procedures that are to be followed if he chooses to withdraw consent. The length of time for a consent for the planned use of a restrictive intervention shall not exceed six months.

(b) A consent required in accordance with G.S. 122C-57(f) or for planned interventions specified by the rules in Subchapter 27E, Section .0100, shall be obtained in writing. Other procedures requiring written consent shall include, but are not limited to, the prescription or administration of the following drugs:

- (1) Antabuse; and
- (2) Depo-Provera when used for non-FDA approved uses.

(c) Each voluntary client or legally responsible person has the right to consent or refuse treatment/habilitation in accordance with G.S. 122C-57(d). A voluntary client's refusal of consent shall not be used as the sole grounds for termination or threat of termination of service unless the procedure is the only viable treatment/habilitation option available at the facility.

(d) Documentation of informed consent shall be placed in the client's record.

*History Note: Authority G.S. 122C-51; 122C-57; 143B-147;
Eff. February 1, 1991;
Amended Eff. January 4, 1993; January 1, 1992;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.*

10A NCAC 27D .0304 PROTECTION FROM HARM, ABUSE, NEGLECT OR EXPLOITATION

(a) Employees shall protect clients from harm, abuse, neglect and exploitation in accordance with G.S. 122C-66.

(b) Employees shall not subject a client to any sort of abuse or neglect, as defined in 10A NCAC 27C .0102 of this Chapter.

(c) Goods or services shall not be sold to or purchased from a client except through established governing body policy.

(d) Employees shall use only that degree of force necessary to repel or secure a violent and aggressive client and which is permitted by governing body policy. The degree of force that is necessary depends upon the individual characteristics

of the client (such as age, size and physical and mental health) and the degree of aggressiveness displayed by the client. Use of intervention procedures shall be compliance with Subchapter 10A NCAC 27E of this Chapter.

(e) Any violation by an employee of Paragraphs (a) through (d) of this Rule shall be grounds for dismissal of the employee.

*History Note: Authority G.S. 122C-59; 122C-65; 122C-66; 143B-147;
Eff. February 1, 1991;
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