10A NCAC 28D .0404 REFUSAL IN REGIONAL MENTAL RETARDATION CENTERS

(a) This Rule applies to mental retardation centers. All other state facilities shall comply with Rule .0403 of this Section.

(b) In the case of an emergency, procedures specified in Rule .0401 of this Section shall apply.

(c) In the case of a client's refusal of psychotropic medication in a non-emergency, the best interest test as specified in Rule .0402 of this Section shall apply.

(d) Medication Refusal Incident Defined.

(1) A medication refusal incident is defined as any behavior on the part of the client, be it verbal or non-verbal, or legally responsible person, which is judged to be an attempt to communicate an unwillingness to have psychotropic medication administered to the client.

(2) Given the characteristics of the mentally retarded population, some very commonplace acts that may not necessarily constitute refusal should be considered. These may include:

(A) passivity or the lack of active participation in various activities which may require physical prompting such as hand over hand manipulation in order to learn a particular skill or complete a particular task;

(B) spitting out medication because of objectionable texture or taste (Therefore, disguising the texture or taste of psychotropic medication with a pleasant tasting vehicle such as applesauce or pudding may not necessarily be considered administration against the client's will.); or

(C) tantrums, self-injurious behavior, aggressive acts, etc. which would not automatically be judged to represent a client's attempt to refuse medication. However, it is recognized these behaviors in some cases may indeed be the only form of communication a client may have with which to express his or her refusal.

(e) Administration of Medication in Non-Emergency Situations. When a minor or adult client or his legally responsible person refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:

(1) If a state facility employee suspects that a client may be attempting to refuse psychotropic medication, the state facility employee shall notify the client's qualified mental retardation professional (QMRP) and the client's internal advocate.

(2) If the QMRP agrees that the client may be attempting to refuse psychotropic medication, the QMRP shall notify the client's internal advocate and shall assemble the client's treatment team, including the treating physician, to assess the refusal incident.

(A) In the case of a client who is suspected of refusing, the team shall make a decision as to whether the client's behaviors, be they verbal or non-verbal, are true indications of refusal. In those instances where behavior is determined not to be refusal, authorization for the continued administration of the psychotropic medication may be given.

(B) In those cases where behaviors are judged to be refusal or when refusal originates with the competent adult client or with the client's legally responsible person, the client when possible or appropriate and the legally responsible person shall be invited to meet with the team to resolve the issue.

(C) The physician shall explain the reasons for prescribing the medication, the benefits and risks of taking the medication and the advantages and disadvantages of alternate courses of action. The team shall make every effort to develop a habilitation plan or specific form of treatment that would be agreeable to the client or his legally responsible person and still be consistent with the treatment needs of the client.

(3) In those cases where an agreement cannot be reached between the treatment team, including the physician, and the legally responsible person, and the team, including the physician, still feels that psychotropic medication administration is in the best interest of the client, the issue shall be referred to the State Facility Review Committee appointed by the State Facility Director.

(A) The composition of this committee should include a complement of professionals, including the Medical Director (or his designated physician) and Human Rights Committee representatives. The internal client advocate shall be invited to represent the client's interest but not be considered a member of the State Facility Review Committee. The Committee should not include state facility employees providing direct services to the client refusing the psychotropic medication. In any event, the confidentiality regulations as codified in 10A NCAC 26B shall be followed.

(B) As with the treatment team, the State Facility Review Committee shall involve the client and the legally responsible person where appropriate in an attempt to arrive at a mutually acceptable solution.

(C) If agreement is reached between the legally responsible person and the State Facility Review Committee, no further proceedings are necessary. If agreement cannot be reached the State Facility Review Committee shall forward its recommendations concerning any changes in treatment or support of existing treatment methods to the Center Director.

(4) If the State Facility Director receives recommendations concerning any changes in treatment or support of existing treatment methods regarding a specific client who has refused psychotropic medications and this recommendation is still unacceptable to the legally responsible person, the Center Director shall have, as the last alternative, the authority to discharge the client under G.S. 122C-57(d). In those cases where the Center Director makes the decision to discharge the client, information shall be provided to the legally responsible person regarding the grievance procedures as specified in 10A NCAC 26B .0203, .0204, and .0205.

(f) Documentation. Each step of the procedure outlined in Paragraphs (d) through (e) of this Rule shall be documented in the client record.

(g) Statistical Record. The State Facility Director shall maintain a statistical record of the use of psychotropic medication against the client's will which shall include, but not be limited to, the number of administrations by client, unit of like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the Division Director and Human Rights Committee on a monthly basis.

History Note: *Authority G.S. 122C-51; 122C-57; 122C-242; 143B-147;*
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.