

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

The requirements of this Section govern the removal of a local management entity (LME) function as set forth in G.S. 122C-115.4(d).

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.

10A NCAC 26C .0602 DEFINITIONS

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

- (1) "Critical performance indicator" means any of the measures as set out in these rules developed and implemented pursuant to G.S. 122C-112.1(a)(33).
- (2) "Focused technical assistance" means the process of advising, providing consultation and evaluation related to a specific function, activity or performance indicator designed to improve the quality of performance of the targeted operation.
- (3) "Local management entity (LME)" means the same as defined in G.S. 122C-3(20b).
- (4) "Material breach" means an LME has failed to maintain for a period of two consecutive months, the required outcome expectations, as outlined in the DHHS/LME contract, on a critical performance indicator after the LME has received focused technical assistance.
- (5) "Monitor" or "Monitoring" means the same as defined in 10A NCAC 27G .0602(9).

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.

10A NCAC 26C .0603 NOTICE OF DEFICIENT PERFORMANCE

The Secretary shall issue a notice of deficient performance in writing to an LME when the LME fails to achieve the required outcome for a critical performance indicator established for one of the primary functions of LMEs as set forth in G.S. 122C-115.4(b). The written notice shall:

- (1) identify the critical performance indicator outcome the LME failed to achieve including a statement of the findings that support a conclusion of deficient performance;
- (2) identify the LME function related to the critical performance indicator outcome;
- (3) identify the required outcome expectation(s); and
- (4) state the timeframe for meeting the required outcome expectation(s).

*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.*

10A NCAC 26C .0604 PLAN OF CORRECTION REQUIREMENTS

- (a) The LME shall respond to the notice of deficient performance by submitting to the DMH/DD/SAS a written Plan of Correction (POC) within 15 working days of receipt.
- (b) The DMH/DD/SAS shall review the POC and approve it as written or communicate in writing with the LME regarding required corrections. The LME shall have a period of five additional working days to submit a revised POC.
- (c) Failure to submit or revise the POC may result in a suspension of funding for the 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.*

10A NCAC 26C .0605 FOCUSED TECHNICAL ASSISTANCE

Within 15 working days of the approval of the POC, the DMH/DD/SAS shall initiate focused technical assistance and monitoring of the LME. The DMH/DD/SAS shall continue to provide focused technical assistance and monitoring until:

- (1) the LME achieves and maintains the required outcome on the designated performance indicator(s) for a period of two consecutive months; or
- (2) the end of six months, whichever occurs first.

*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.*

10A NCAC 26C .0606 REMOVAL OF LME FUNCTION

- (a) The LME shall be considered to have a material breach if the LME fails to achieve and maintain for a period of two consecutive months, the required outcome expectations on the designated performance indicator(s) after the six month period occurs as specified in Rule .0605 of this Section.
- (b) Upon identifying the LME as having an uncorrected material breach and within a timeframe not to exceed 30 working days, the Secretary shall arrange for a contract with another LME to implement the function associated with the deficient critical performance indicator as set forth in G.S. 122C-115.4(d)(3). Prior to the removal of the function, the Secretary shall send written notification to the LME stating:
 - (1) the LME function that is being removed;
 - (2) the date of the removal of the function;
 - (3) the entity identified to implement the function being removed;
 - (4) the amount of fund reallocation from the deficient LME to the receiving entity; and
 - (5) the expectation that the deficient LME shall cooperate with the Secretary and receiving entity as necessary to ensure a smooth, seamless transition of the 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.*

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

10A NCAC 26C .0701 SCOPE

A county seeking to disengage from a Local Management Entity-Managed Care Organization (LME-MCO) and align with another LME-MCO operating under a Medicaid waiver shall first obtain the approval of the Secretary of the Department of Health and Human Services (DHHS) in accordance with the rules of this Section.

*History Note: Authority G.S. 122C-115;
Eff. February 1, 2017.*

10A NCAC 26C .0702 COUNTY REQUEST TO DISENGAGE FROM A LOCAL MANAGEMENT ENTITY-MANAGED CARE ORGANIZATION

(a) A county seeking to disengage from an LME-MCO shall provide written notice of its intent to disengage from an LME-MCO to the Secretary, the Co-Chairs of the Joint Legislative Oversight Committee on Health and Human Services, and affected counties a minimum of nine months prior to the proposed effective date of disengagement.

(b) A county seeking to disengage from an LME-MCO shall publish its plan for disengagement on its website, and the website of the LME-MCO with which it seeks to align.

(c) The county seeking to disengage from an LME-MCO shall accept public comments on its disengagement plan for a minimum of 60 calendar days. The county shall solicit comments from consumers, advocates, self-advocates, and State and Local Consumer and Family Advisory Committees (CFACs) using locally established communication methods, such as mailings, routine stakeholder meetings, press releases, and social media messages, and shall post the public comments on its website for a minimum of 30 calendar days.

(d) A county seeking to disengage from an LME-MCO and realign with a different LME-MCO operating a Medicaid waiver shall provide written documentation of the following to the Secretary, which shall constitute its written request to disengage:

- (1) Approval of its disengagement plan by its Board of County Commissioners which reflects the date of the approval and that the approval was by majority vote;
- (2) A written plan, approved by its Board of County Commissioners, to ensure continuity of services during the transition which includes written notice to the provider agencies with which the LME-MCO contracts;
- (3) A written plan, approved by its Board of County Commissioners, which provides for distribution of real property, where appropriate, and reflects title to the same;
- (4) Approval of the Area Board, by majority vote, of the LME-MCO with which it is seeking to realign;
- (5) Evidence of written notice to the other counties who are also members of the LME-MCO from which the county is seeking disengagement;
- (6) Evidence of its written notice to the providers impacted by its decision to disengage;
- (7) Evidence of its compliance with the population requirements of G.S. 122C-115(a);
- (8) Evidence of its financial liabilities to the LME-MCO from which it is seeking to disengage within 30 calendar days of the request to disengage; and
- (9) Documentation of its compliance with Paragraphs (a) through (c) of this Rule.

*History Note: Authority G.S. 122C-115;
Eff. February 1, 2017.*

10A NCAC 26C .0703 SECRETARY RESPONSE TO COUNTY REQUESTS TO DISENGAGE FROM A LOCAL MANAGEMENT ENTITY-MANAGED CARE ORGANIZATION

(a) Upon written request by a county seeking to disengage from an LME-MCO, the Secretary may waive the nine month requirement set forth in Rule .0702(a) of this Section upon consideration of the following factors:

- (1) the impact of delay upon consumers currently served in the county seeking to disengage;
- (2) the financial vulnerability of the LME-MCO from which disengagement is sought; and
- (3) any substantiated evidence of criminal activity or malfeasance on the part of the LME-MCO from which disengagement is sought.

(b) The Secretary shall consider the following in deciding whether to approve a county request to disengage from an LME-MCO and realign with a different LME-MCO operating under a Medicaid waiver:

- (1) the impact to and public comments received from consumers, advocates, self-advocates, and State and Local CFACs within the county in response to Rule .0702(c) of this Section;
- (2) the county's plan for disengagement from one LME-MCO and realignment with a different LME-MCO;

- (3) the county's plan to ensure continuity of services during the disengagement and realignment phase;
 - (4) whether the county has complied with the requirements of Rule .0702 of this Section;
 - (5) whether the county is contiguous to the catchment area of the LME-MCO with which it is requesting to align;
 - (6) the timing of the request and whether the disengagement will conflict with setting capitation rates;
 - (7) whether the disengagement will impact the financial viability of the LME-MCO from which the county is seeking to disengage;
 - (8) whether the disengagement and realignment will ensure compliance with the population requirements of G.S. 122C-115(a);
 - (9) whether the disengagement and realignment will impact the stability, as a whole, of the State's healthcare system;
 - (10) how the disengagement and realignment will affect the quality, variety, and amount of services for the clients, as defined in G.S. 122C-3, in the subject county; and
 - (11) the operational alignment of the county within the context of the LME-MCO disengagement related to geography, service delivery, and demonstrated provision of whole-person centered care.
- (c) The Secretary shall issue a written decision to approve or deny the request for disengagement and realignment within 90 calendar days of receipt.
- (d) The Secretary may approve the request as submitted or set conditions upon its issuance based upon consideration of the factors set forth in Paragraph (b) this Rule.
- (e) The Secretary shall notify the following of the decision to approve or deny a county request for disengagement and realignment:
- (1) The Board of County Commissioners of the county seeking to disengage;
 - (2) The Boards of County Commissioners of the counties of the LME-MCO with which realignment is requested;
 - (3) The LME-MCO from which disengagement is sought;
 - (4) The LME-MCO with which realignment is requested; and
 - (5) The Co-Chairs of the Joint Legislative Oversight Committee on Health and Human Services.

*History Note: Authority G.S. 122C-115;
Eff. February 1, 2017.*