

## CHAPTER 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

### SUBCHAPTER 28A - COMMITTEES AND PROCEDURES

#### SECTION .0100 – SCOPE AND DEFINITIONS

##### 10A NCAC 28A .0101 SCOPE

(a) The purpose of the rules in Subchapters 28A, 28B, 28C and 28D of this Chapter is to set forth regulations governing human rights for clients in state facilities. The state facilities governed by these Rules are the regional psychiatric hospitals, mental retardation centers, alcohol and drug abuse treatment centers, Wright School, the North Carolina Special Care Center at Wilson, Whitaker School and any other like state owned and operated institutions, hospitals, centers or schools that may be established under the administration of the Division. In addition to these Rules, each state facility shall follow the North Carolina General Statutes regarding client rights which are specified in Article 3 of Chapter 122C.

(b) A state facility that is certified by the Centers for Medicare and Medicaid Services (CMS) as an Intermediate Care Facility for the Mentally Retarded (ICF/MR), or a Medicare/Medicaid Hospital or a Psychiatric Residential Treatment Facility (PRTF) is deemed to be in compliance with the rules in Subchapters 28A, 28B, 28C and 28D of this Chapter, with the exceptions of 28A .0102; 28D .0203; .0206; .0207; .0208; .0209 and .0210. A state facility that is certified as specified in Paragraph (b) of this Rule shall comply with the following:

- (1) use of the definition of physical restraint as specified in Subparagraph .0102 (b)(32) of this Section;
- (2) documentation requirements as specified in Rules .0203; .0206; .0207; .0208; .0209 and .0210 of Subchapter 28D;
- (3) debriefing requirements as specified in Rule .0206 of Subchapter 28D; and
- (4) training requirements as specified in Rules .0209 and .0210 of Subchapter 28D.

*History Note: Authority G.S. 122C-51; 143B-17; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. October 1, 2004; April 1, 1990; July 1, 1989.*

##### 10A NCAC 28A .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

(b) As used in the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means; or unreasonable confinement; or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
  - (A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or
  - (B) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or
  - (C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-

time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Client record" means any record made of confidential information.
- (7) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (8) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (9) "Consent" means concurrence by a client or his legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (10) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (11) "Division Director" means the Director of the Division or his designee.
- (12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(25) of this Rule for definition of medical emergency].
- (13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(25) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (15) "Exploitation" means the use of a client or her/his resources including borrowing, taking or using personal property with or without her/his permission for another person's profit, business or advantage.
- (16) "Forensic Division" means the unit at Dorothea Dix Hospital which serves clients who are:
  - (A) admitted for the purpose of evaluation for capacity to proceed to trial;
  - (B) found not guilty by reason of insanity;
  - (C) determined incapable of proceeding to trial; or
  - (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.
- (17) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation within the jurisdiction of the state facility. A grievance does not include complaints that can be resolved without delay by staff present. A complaint that is not resolved shall be filed and processed in accordance with the requirements of 10A NCAC 28B .0203.
- (18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.

- (19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (20) "Interpreter services" means specialized communication services provided for the hearing impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- (21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- (22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- (23) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (24) "Major physical injury" means damage caused to the body resulting in profuse bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- (25) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- (26) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- (27) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (28) "Neglect" means the failure to provide care or services necessary to maintain the mental and physical health of the client.
- (29) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (30) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- (31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (32) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are

- designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.
- (33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 28D, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.
- (34) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.
- (35) "Qualified professional" means, within the mh/dd/sas system of care, an individual who is:
- (A) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or
  - (B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
  - (C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
  - (D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (36) "Regional alcohol and drug abuse treatment center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (37) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).
- (38) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (39) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (40) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (41) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (42) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35) of this Rule.
- (43) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment Program Maximum Security Ward in the Spruill Building at Dorothea Dix Hospital, the use of locked rooms is not considered seclusion for clients with criminal charges who are:
- (A) undergoing pretrial evaluations ordered by a criminal court;
  - (B) in treatment for restoration of capacity to proceed;
  - (C) in treatment to reduce violence risk; or
  - (D) considered to be an escape risk.
- (44) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.

- (45) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (46) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (47) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (48) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.
- (49) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.
- (50) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been assigned to a director, supervisor, administrator, or manager.
- (51) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

*History Note:* Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147;  
 Eff. October 1, 1984;  
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 Temporary Amendment Eff. January 1, 1998;  
 Amended Eff. April 1, 1999;  
 Temporary Amendment Eff. January 1, 2001;  
 Temporary Amendment Expired October 13, 2001;  
 Temporary Amendment Eff. November 1, 2001;  
 Amended Eff. April 1, 2003.

## **SECTION .0200 - HUMAN RIGHTS COMMITTEES**

### **10A NCAC 28A .0201 PURPOSE OF HUMAN RIGHTS COMMITTEES**

A human rights committee shall be established at each state facility to provide an additional safeguard for protecting the human, civil, legal and treatment rights of clients who, due to impairments resulting from mental retardation, mental illness or substance abuse, may be less able to articulate and exercise their legal entitlements than those not impaired.

*History Note:* Authority G.S. 122C-64; 131E-67; 143B-147;  
 Eff. October 1, 1984;  
 Amended Eff. July 1, 1989.

### **10A NCAC 28A .0202 MEMBERSHIP**

- (a) Members of human rights committees shall be appointed by the Secretary.
- (b) Recommendations for committee appointments and the appointment process shall be as follows:
  - (1) The State Facility Director shall maintain a schedule of the terms of appointment for committee members and shall request names of possible appointees from voluntary groups serving the mentally ill, mentally retarded or substance abusers, as appropriate, as well as from the Chairperson of the State Facility Human Rights Committee six months prior to the expiration of a committee member's term. The State Facility Director shall submit these nominations, as well as any additional nominations, to the appropriate deputy director in the Division five months prior to the expiration of the Committee member's term.
  - (2) Within two weeks following receipt of the nominations, the Deputy Director shall submit the Committee and voluntary group recommendations for nominations, as well as any other nominations supported by the Deputy Director, to the Division Director.
  - (3) The Division Director shall submit the committee and voluntary group recommendations, as well as any other nominations he supports, to the Secretary four months prior to the expiration of the Committee member's term of office.
  - (4) The Secretary shall contact his choices for potential appointees, explain committee member responsibilities and confirm appointments in writing.

- (5) The Secretary shall notify the Division Director and the committee chairperson of confirmed committee appointments and the term of office for appointees two months prior to the expiration of the Committee member's term.
  - (6) The Division Director shall notify the State Facility Director of the appointment.
- (c) Appointments shall be made with an effort to consider the geographic distribution, race and sex composition of the Human Rights Committees.
- (d) Members shall represent only one of the organizations or professional groups indicated in Paragraphs (e), (f), (g), (h) and (i) of this Rule during any single term in their capacity as human rights committee members.
- (e) Each regional psychiatric hospital shall have a committee consisting of ten members, none of whom shall be currently employed by the Division or attorney general's office.
- (1) All members shall be knowledgeable about mental health and mental illness issues as evidenced by interest, experience or education.
  - (2) Appointments shall be made with an effort to consider representation of the needs and characteristics of the state facility clients.
  - (3) Appointees shall include one member from the North Carolina Mental Health Association; one member from the North Carolina Alliance for the Mentally Ill; and one member from the North Carolina Association for Retarded Citizens.
  - (4) Four members shall be appointed at large.
  - (5) At least one member shall be a client and at least one member shall be a family member.
  - (6) One member shall be a licensed attorney.
- (f) Each regional mental retardation center shall have a committee consisting of ten members, none of whom shall be currently employed by the Division.
- (1) Four of the Committee members shall include the legally responsible person of persons with mental retardation who may or may not reside in a state facility, persons with mental retardation, and at least one client of a regional mental retardation center.
  - (2) Three members shall be professionals from three different associated fields such as social work, education, psychology or medicine.
  - (3) One member shall be a licensed attorney.
  - (4) Two members shall be selected at large.
- (g) Each regional alcoholic rehabilitation center shall have a committee consisting of five members, none of whom shall be currently employed by the Division.
- (1) Two persons shall be members of voluntary groups representing the interests of persons having substance abuse problems.
  - (2) One person shall be a client or family member of a client of an alcoholic rehabilitation center.
  - (3) Two members shall be selected at large.
- (h) Wright School, Whitaker School and any other like state facility established and administered by the Division to serve emotionally disturbed children and adolescents each shall have a committee consisting of five members, none of whom shall be currently employed by the Division.
- (1) Two persons shall be members of voluntary groups representing the interest of children and adolescents with special needs.
  - (2) One person shall be the legally responsible person of a client of a state facility for emotionally disturbed children.
  - (3) Two members shall be selected at large.
- (i) North Carolina Special Care Center at Wilson and any other like state facility established and administered by the Division shall have a committee consisting of five members, none of whom shall be currently employed by the Division.
- (1) All members shall be knowledgeable about mental health and nursing care issues as evidenced by interest, experience or education.
  - (2) Four members shall be appointed at large.
  - (3) At least one member shall be a client or family member of a client.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.*

- (a) An internal client advocate may serve as a non-voting member of each human rights committee.
- (b) In addition to the members appointed by the Secretary, the Chairperson may designate other non-voting ex officio members to assist the Committee. Ex officio members may be employees of the Division.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.*

#### **10A NCAC 28A .0204 TERMS OF OFFICE**

- (a) All members shall be appointed to serve three year terms except for the initial terms at state facilities which did not have human rights committees established upon the original effective date of these rules.
- (b) Initial appointments for each of the Committees established under Paragraph (a) of this Rule shall be as follows:
  - (1) One member shall serve a four-year term, expiring June 30.
  - (2) Two members shall serve a three-year term, expiring June 30.
  - (3) One member shall serve a two-year term, expiring June 30.
  - (4) One member shall serve a one-year term, expiring June 30.
- (c) Members may be appointed for no more than two consecutive three-year terms.
- (d) If a vacancy occurs due to death, resignation or disqualification, the Human Rights Committee Chairperson shall notify the State Facility Director who shall initiate procedures to fill the vacancy in accordance with Rule .0202(b) in this Section. Members appointed in this manner shall serve out the term of the member who created the vacancy and shall represent the category of membership represented by the member whose place they are selected to fill.
- (e) Human rights committee members whose appointment terms have expired may continue to serve on the Committee until such time that the Committee member is notified by the State Facility Director that another appointment has been made and the Committee member's term of appointment has officially expired.
- (f) If a member misses three consecutive meetings without being excused by the Chairperson, the Chairperson shall notify the Secretary. Missing three consecutive meetings without being excused by the Chairperson shall constitute good cause for being removed from the Committee.
- (g) The Secretary shall have the authority to remove any member of a human rights committee from office for good cause.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.*

#### **10A NCAC 28A .0205 OFFICERS**

- (a) Each human rights committee shall elect by a majority a chairperson to serve for a period of two years. No person shall serve more than two consecutive terms as chairperson. The chairperson shall be a committee member who does not work directly with clients at the state facility.
- (b) Other officers may be elected as needed based on a majority vote of the Committee.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.*

#### **10A NCAC 28A .0206 MEETINGS**

- (a) Each human rights committee shall meet at least monthly unless an alternative schedule is approved by the Secretary but in no case less than six times per year. Committees may meet more often as necessary at the call of the Chairperson. The chairperson shall call a meeting of the committee at any time such is requested by four or more members of a ten-member committee or two or more members of a five-member committee.
- (b) A majority of each committee shall constitute a quorum for the transaction of business.
- (c) Human rights committees as public bodies are subject to open meetings as specified in G.S. 143-318.9 through 143-318.12. Due to the nature of the deliberations of human rights committees, it is anticipated that some of the issues would be discussed in executive session in accordance with G.S. 143-318.11(a)(7) and (a)(12). The chairperson shall file a schedule of regular meetings with the Secretary of State as specified in G.S. 143-318.12.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;*

*Eff. October 1, 1984.*

#### **10A NCAC 28A .0207 DUTIES**

(a) The duties of the Human Rights Committees are as follows:

- (1) review of compliance with laws in G.S. 122C, Article 3, dealing with the rights of clients, and reviewing the state facility's compliance with the human rights rules in this Subchapter and Subchapter 28B through 28D of this Chapter;
- (2) reviewing and assessing the efficiency of existing and proposed methods and procedures for protecting the rights of clients of their respective state facilities;
- (3) serving as an independent review body to hear and make recommendations concerning alleged violations of the rights of individuals and groups brought by clients, client advocates, parents, guardians, state facility employees, or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
- (4) reviewing programs and services that deal with the legal and human rights of clients;
- (5) reviewing cases of alleged abuse, neglect or exploitation or failure to provide services of whatever nature brought by clients, client advocates, parents, guardians, state facility employees, or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
- (6) reviewing cases brought by clients, client advocates, parents, guardians, state facility employees, or others regarding the use of seclusion, physical or mechanical restraint, intrusive or aversive procedures, electroconvulsive therapy, medication prescribed above recommended dosages as specified in 10A NCAC 28I .0300 or any procedures carried out against the will of the client. The Committee may determine the extent of the review, including but not limited to statistical review and individual case review involving a review in compliance with Rule .0209 of this Section of the client record;
- (7) reviewing complaints, grievances or other client rights issues of concern brought by clients, client advocates, parents, guardians, state facility employees, or others in compliance with Rule .0209 of this Section for any necessary review of the client record; and
- (8) reviewing any issues of concern brought by the State Facility Director, Division Director, a Deputy Director, or the Secretary.

(b) The duties listed in Paragraph (a) of this Rule shall not be interpreted to allow human rights committees to concern themselves with the management of the respective state facilities except where there is an issue of violation of a client's rights.

(c) Annually, by September 1, each committee shall submit, through the Division Director to the Secretary, a report of its activities, accomplishments, and recommendations for the previous year, July 1 through June 30.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.*

#### **10A NCAC 28A .0208 PROCEDURES**

(a) There shall be a written agreement governing the relationship and responsibilities of the State Facility Director, Human Rights Committee and client advocate. Such agreement may be superseded by any written agreements between the Division and the Governor's Advocacy Council for Persons with Disabilities.

(b) If the majority of the Human Rights Committee feels that an issue requires action, the Chairperson of the Committee shall submit a written statement regarding the issue to the State Facility Director and indicate a desired response date. The issue shall be brought to the attention of the State Facility Director. If the Committee is not satisfied with the actions of the State Facility Director, the issue shall be brought to the attention of the Division Director and the appropriate deputy director simultaneously. If the Committee is not satisfied with the action of the Division Director or the Deputy Director involved, the issue shall be brought to the attention of the Secretary.

(c) If the majority of the Committee votes that an issue does not require action, but two or more members feel strongly that some action is necessary, these members may submit a minority report to the State Facility Director, the Division Director and Deputy Director, and the Secretary in the same manner as a majority decision.

(d) In cases deemed appropriate by the Committee, steps in the communications procedure as outlined in Paragraph (b) of this Rule may be omitted, provided that the person in authority in each omitted step is notified in writing.

(e) The Committee may also seek help in solving problems from the Governor's Advocacy Council for Persons With Disabilities, Governor's Advocacy Council on Children and Youth, the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, and the Council on Developmental Disabilities. In these cases, persons in

authority at each step of the prescribed communications procedure as outlined in Paragraph (b) of this Rule shall be notified in writing. Minority report procedures, as outlined in Paragraph (c) of this Rule, shall be applicable in this procedure as well.

*History Note:* Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.

#### **10A NCAC 28A .0209 CONFIDENTIALITY**

- (a) Committee members shall have access to the records of clients only upon written consent of the client or legally responsible person as specified in 10A NCAC 26B .0209 "Confidentiality Rules", division publication APSM 45-1. This document is available for inspection in each state facility or in the Publications Office of the Division. This right of access is granted so that the Committees may perform their duties of overseeing and monitoring the action of the state facility.
- (b) Committee members shall treat the client record as confidential information as specified in 10A NCAC 26B .0108.

*History Note:* Authority G.S. 122C-53(a); 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.

#### **10A NCAC 28A .0210 LIMITATIONS ON REPRESENTATION**

In order for a professional to be a member of a human rights committee he must agree not to accept a client of the state facility as a private client for remuneration for professional services on the client's behalf during the member's term. If a professional, while a member of the Committee, accepts such a client, then he becomes disqualified to serve on the Committee.

*History Note:* Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.

#### **10A NCAC 28A .0211 STATE FACILITY RESPONSIBILITY**

- (a) The State Facility Director shall provide necessary clerical and support services to the Human Rights Committee.
- (b) The State Facility Director shall provide an orientation to the state facility for new members of the Committee at the Chairperson's request.
- (c) The State Facility Director shall assure that the facility's Staff Development Services shall implement the Division's annual plan of training for human rights committee members.
- (d) The State Facility Director shall be responsible for the reimbursement of mileage expenses for members of the Committee who request financial assistance to attend regularly scheduled meetings.

*History Note:* Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.

#### **10A NCAC 28A .0212 DIVISION RESPONSIBILITY**

- (a) The Division Director shall serve as the point of contact between the Committees and the Secretary.
- (b) The Division's Training Office, in conjunction with the Governor's Advocacy Council for Persons with Disabilities (GACPD), shall develop an annual plan of training for human rights committee members.
- (c) The Division Director shall provide collaboration opportunities for each state facility human rights committee and shall assure an opportunity for committee chairpersons to meet at least annually.
- (d) The Division Director shall provide written orientation materials for all new members. Written training materials shall cover at a minimum the structure and role of the Division; the role of State Facility Human Rights Committees; state statutes; and rules codified in the North Carolina Administrative Code regarding human rights and related areas of concern. Such materials shall be available in the Quality Assurance Section of the Division.

*History Note:* Authority G.S. 122C-64; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.

## **SECTION .0300 - INFORMING CLIENTS AND STATE FACILITY EMPLOYEES OF RIGHTS**

### **10A NCAC 28A .0301 INFORMING CLIENTS OF RIGHTS**

(a) The State Facility Director shall assure that all clients and legally responsible persons are informed of the client's rights at the time of admission or not more than 24 hours after admission [with the exceptions specifically provided for in Paragraph (b) of this Rule]. The state facility shall develop a policy which includes, but is not limited to, the following:

- (1) specifying who is responsible for informing the client;
- (2) providing a written copy of rights to clients who can read and explaining the rights to all clients;
- (3) documenting in the client record that rights have been explained to the client;
- (4) posting copies of rights and the person or office to contact for information regarding rights in areas accessible to the client.
- (5) describing the role of the Human Rights Committee and internal client advocate and how to utilize their services;
- (6) informing the legally responsible person of a minor or incompetent adult client that he may request notification after any occurrence of the use of an intervention procedure as specified in 10A NCAC 28D .0203, .0204 and .0205; and
- (7) informing the competent adult client that he may designate an individual to receive notification, in accordance with G.S. 122C-53(a), after any occurrence of the use of an intervention procedure as specified in 10A NCAC 28D .0203, .0204 and .0205.

(b) If the client cannot be informed of his rights within 24 hours after admission because of his condition or if the legally responsible person cannot be notified within 24 hours after admission, then this exception and any alternative means of implementing this right shall be documented. However, the state facility may delay notifying the legally responsible person of client rights for up to 72 hours when necessary for week-end admissions.

*History Note: Authority G.S. 122C-51; 122C-53; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.*

### **10A NCAC 28A .0302 INFORMING STATE FACILITY EMPLOYEES**

The State Facility Director shall assure that all state facility employees are informed of the rights of clients and shall develop a policy which includes but is not limited to the following:

- (1) specifying who is responsible for informing new and existing state facility employees;
- (2) distributing written copies of client rights as specified in Article 3 of Chapter 122C to all state facility employees and obtaining documentation that state facility employees have read and understand the client rights;
- (3) obtaining documentation that qualified professionals on staff have read and understand client rights as specified in Article 3 of Chapter 122C of the N.C. General Statutes and regulations as specified in 10A NCAC 28A through 28D;
- (4) establishing a procedure for training or updating state facility employees' awareness of client rights as specified in Article 3 of Chapter 122C of the N.C. General Statutes, 10A NCAC 28A, 28B, 28C, and 28D, and through state facility policy at least annually and whenever changes occur. Such education shall be documented; and
- (5) identifying individuals who can be contacted to answer questions regarding rights.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.*

### **10A NCAC 28A .0303 NOTIFICATION ON GUARDIANSHIP**

(a) The client shall be informed of the different aspects and policies concerning guardianship when the use of guardianship becomes an issue.

(b) The client shall be permitted to participate as fully as possible in all decisions that will affect him. State facility employees shall seek to preserve for the incompetent adult client the opportunity to exercise those rights that are within his comprehension as specified in G.S. 35A-1201(a)(4) and (5).

(c) The State Facility Director shall assure that incompetency proceedings are pursued for adult clients when the treatment team determines that the client is unable to make or communicate important decisions about his life. To the extent possible statutory proceedings for limited guardianship rather than full guardianship should be pursued.

*History Note:* Authority G.S. 122C-51; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.

#### **10A NCAC 28A .0304 INFORMING CLIENTS OF POLICIES**

The State Facility Director shall assure that each client and the legally responsible person are informed of the following:

- (1) the state facility policy on reimbursement or criminal liability for personal or property damage caused by the client to the state facility, other clients, employees, visitors or their property;
- (2) the state facility policy on charges for treatment or habilitation services as consistent with 10A NCAC 28C .0310;
- (3) the state facility rules and regulations that the client is expected to follow and possible penalties for violations;
- (4) the state facility grievance procedure;
- (5) the state facility's authority to initiate, when appropriate, involuntary commitment procedures for a voluntary client; and
- (6) the state facility policy on search and seizure.

*History Note:* Authority G.S. 122C-51; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989.

#### **10A NCAC 28A .0305 RESEARCH**

The State Facility Director shall assure that all research involving human subjects is conducted in accordance with accepted research practices and is reviewed according to 10A NCAC 26C .0200. Research that places human subjects at risk, except minimal risk research, shall be subject to the Department of Health and Human Services policy for the protection of human research subjects as codified in 45 C.F.R. 46, adopted pursuant to G.S. 150B-14(c).

*History Note:* Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989.

#### **10A NCAC 28A .0306 CONSENT TO PARTICIPATE IN RESEARCH**

(a) The State Facility Director shall assure that all clients who participate in research, except minimal risk research, elect to do so after having received a full explanation of the purpose, potential benefits and risks of participation.

(b) Informed written consent shall be obtained from the client or legally responsible person for each new research project. Whenever a client is adjudicated incompetent and is a ward of the state, or whenever a client adjudicated incompetent or a minor client objects to participation in a research project, the client shall not participate in the research project. Consent shall be documented in the client record and shall include:

- (1) client or legally responsible person's signature and date;
- (2) brief description of the research project;
- (3) length of consent, which shall not exceed six months without renewal;
- (4) notification that consent may be withdrawn at any time without penalty;
- (5) explanation of any potential risks and plans to reduce or address such risks;
- (6) signature and title of the investigator and date;
- (7) disclosure of any established alternative procedures that would probably achieve similar therapeutic goals as those anticipated through the research; and
- (8) a provision that the client or legally responsible person will be given notification of any significant changes in the research procedures which directly affect the client.

*History Note:* Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;  
Eff. October 1, 1984;

*Amended Eff. July 1, 1989.*