

North Carolina
Department of
Health and
Human Services



Child Residential Survey Report

July 11, 2005

Division of Facility Services



North Carolina Department of Health and Human Services
Division of Facility Services

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Raleigh, North Carolina 27699-2701

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Robert Fitzgerald
Director

July 11, 2005

Secretary Carmen Hooker Odom
N.C. Department of Health and Human Services
Raleigh, North Carolina

Dear Secretary Hooker Odom:

As requested, the North Carolina Division of Facility Services (DFS), in collaboration with the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) staff, has conducted focused surveys of all children's residential treatment facilities in the State. The primary purpose was to determine compliance with the North Carolina Administrative Rules governing child residential facilities and provide information relative to the treatment needs of the children and adolescents in these homes.

A copy of our final report is attached. If further information is needed, please let us know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Fitzgerald", written over a circular stamp or seal.

Robert Fitzgerald

Cc: Dan Stewart, CPA
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Overview

The Division of Facility Services (DFS) responded to a January 24, 2005 request by Governor Easley and the Secretary of the Department of Health and Human Services to conduct focused surveys of all children's residential treatment facilities (service category 10 NCAC 27G .1300). This request was in response to a death that occurred in a group home in 2004 and to concerns that the North Carolina Administrative Rules governing child residential facilities were not sufficient to support the treatment needs of the children and adolescents in these homes.

Per Governor Easley's direction to DHHS Secretary Carmen Hooker Odom, the Division of Facility Services was also directed to suspend licensure of service category 10 NCAC 27G .1300, beginning January 24, 2005. This suspension remains in effect as of the date of this report. DFS has 164 pending applications for the 10 NCAC 27G .1300, children's residential treatment facilities service category. Applications received after January 24, 2005 have been returned to the providers. It is anticipated that the suspension will not be lifted until the revised child residential rules go into effect.

This report describes the plan used to complete the focused survey project, including the following:

- collaboration strategy with the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS),
- a brief outline of the survey tool developed,
- how surveyors gathered information,
- the process for issuing sanctions, and
- information covered in the weekly updates.

The report concludes with the outcomes and findings of the survey project, including specific insights from the DMH/DD/SAS.

Plan

DFS collaborated with the DMH/DD/SAS to complete this project. Forty-three surveyors from DFS and 13 surveyors from the DMH/DD/SAS were assigned to survey 1,054 facilities. Surveyors began entering facilities on January 29, 2005 and completed the surveys on June 3, 2005.

The DFS Mental Health Licensure and Certification Section (DFS) developed a survey tool that covered five specific areas of concern identified by the Secretary and division directors. These were:

- Staff training
- Staff-to-client ratio
- Staff qualifications
- Criminal record background checks
- Supervision of paraprofessionals

Surveyors were also directed to note issues relating to the health, safety and welfare of clients. To accomplish this task, surveyors conducted on-site visits to each facility and assessed compliance with administrative rules that were directly related to the areas of concern and/or the health, safety and welfare of clients. This included review of abuse and neglect investigations, incident reports, complaint allegations, use of restrictive interventions, policies and procedures and other related documentation. When indicated, it also included interviews with staff and clients. The surveyors analyzed the information gathered, and in consultation with their supervisor, determined if there were any violations of administrative rules. There is a continuum of administrative sanctions depending upon the severity of the violations. **Appendix A** provides a brief description of the different sanctions.

Weekly meetings were held with the Secretary and representatives of the divisions involved to discuss ongoing progress and outcomes. During these meetings DFS reported cumulative results that included:

- Number of surveys completed
- Number of homes vacant
- Number of homes that never had clients
- Number of licenses surrendered
- Percent homes vacant
- Percent vacant homes never had clients
- Number of Type A Violations
- Number of Type B Violations
- Number of suspensions of admissions
- Number of summary suspensions
- Number of provisional licenses
- Number of revocations of license
- Number of counties surveyed

Findings are described below.

Findings

Throughout the survey process, the client vacancy rate held at approximately 30 percent and the number of homes vacant that never had clients also held at approximately 30 percent. The final figures are as follows:

- 105 facilities surrendered their licenses.
- 29 percent of the total number of facilities were vacant (305 homes)
- 27 percent of the vacant facilities had *never* had clients (83 homes)

During the survey process, 105 facilities surrendered their license, generally due to the fact that they no longer had clients. However, three of the 105 facilities surrendered their licenses after receiving administrative sanctions.

Of the remaining 949 facilities, 71 received 106 administrative sanctions and 458 received standard deficiencies.

The large majority of the standard deficiencies were found in the administrative rule 10A NCAC 27G .0202: Personnel Requirements. Personnel Requirements include: (1) training requirements, (2) minimum education/skills/experience/licensure requirements, (3) criminal conviction disclosure, and (4) checking the N.C. Health Care Personnel Registry for findings of abuse or neglect. All of these are directly related to three of the areas of concern noted above:

- staff training,
- staff qualifications and
- criminal record background checks.

The 106 administrative sanctions issued to 71 facilities included:

- 38 Type A violations
- 41 Type B violations
- 11 Suspensions of Admissions
- Four Summary Suspensions
- Two Provisional Licenses
- 10 Revocations

A graph of group home sanctions can be found in **Table 1**. Of the 77 counties that had group homes, 27 counties had facilities with administrative sanctions. See **Table 2** for a summary of sanctions by county.

Administrative sanctions were issued based on violation of one or more administrative rules. The following is an overview of the *types* of violations that comprised the sanctions (therefore, the number of violations is more than the number of sanctions issued).

- **Seclusion & Restraint:** These rules cover training and implementation of appropriate seclusion and restraint techniques. (7 violations)
- **Personnel & Competencies of Qualified Professionals and Paraprofessionals:** These rules cover the minimum education/skills/experience/licensure requirements, criminal conviction disclosure, and checking the NC Health Care Personnel Registry for findings of abuse or neglect. It also covers the knowledge, skills and abilities of employees to conduct their job. (19 violations)

- **Assessment & Treatment, Client Services, and Medication Errors:** These rules cover appropriately assessing and providing for the client's needs and treatment, including medication administration. (30 violations)
- **Protection from Abuse, Neglect, and Exploitation:** This rule states that it is the employees' responsibility to protect the client from abuse, neglect and exploitation. (23 violations)

It is important to note that of the five areas of concern identified earlier, the only one generally found to be in compliance was the staff-to-client ratio. Most facilities were able to abide by the 1:4 staff-to-client ratio that is currently in rule.

However, as revealed by the above findings, there were many violations in all four of the other areas – staff training, staff qualifications, criminal background checks, and supervision of paraprofessionals. These four areas were cited previously in the Personnel rules and the Competencies rules.

The other 60 violations were related to the health, safety, and welfare of the clients being served.

The surveyors from the DMH/DD/SAS were able to provide additional insight from their perspective regarding case management services and Local Management Entities (LMEs), which is not within the purview of DFS. Although the issues identified by DMH/DD/SAS were not evident in all cases, they were noted frequently. Following is a brief outline of the types of DMH/DD/SAS findings:

Case Management Services:

- Case managers unable to articulate their responsibility for placement of the child or the reason why the child was placed in a residential treatment facility
- Case managers unable to give a current status of the child's progress in residential treatment
- Services plans which were not up to date or did not include goals for residential treatment
- Minimal knowledge by case managers of residential treatment rules and regulations
- Minimal contact with a provider before placing a child in the facility
- Children placed out of catchment area, making family/guardian involvement difficult, without evidence that a closer placement location was considered

Local Management Entities:

- Inadequate monitoring and oversight of contracted case management agencies
- Insufficient monitoring of residential providers

Rules Changes

At the same time that Secretary Carmen Hooker Odom directed DFS to conduct the on-site review of all homes licensed under 10 NCAC 27G.1300, she also directed DMH/DD/SAS to strengthen the rules under which the facilities are licensed. DMH/DD/SAS convened a workgroup with membership from DMH/DD/SAS, DFS, and the Divisions of Medical Assistance (DMA) and Public Health (DPH) to draft new rules. The changes proposed to the rules are designed to further protect the health and safety of children and to improve treatment outcomes. To achieve these goals, the revised rules require increased numbers of staff and increased credentials of staff in key positions.

In accordance with G. S. 122C-26, the authority for licensure rules for these facilities is vested with the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.

- On January 19, 2005 the Rules Committee of the Commission considered the proposed rule changes, as drafted by the departmental workgroup. The Rules Committee made minor changes to the proposed rules and voted unanimously to recommend approval by the Commission.
- On February 17, 2005 the Commission unanimously authorized DMH/DD/SAS to begin the formal process for rule making by publishing the text of the proposed rules in the North Carolina Register.
- The rules were published on March 15, 2005 for the required sixty (60) day public comment period.
- On April 13, 2005 the Rules Committee of the Commission met to discuss the public comment that had been received on the proposed rules as of that date. A number of providers and advocacy organizations were given the opportunity to comment in that meeting. The Rules Committee took no formal action at that meeting since the sixty (60) day public comment period had not ended.
- On May 18, 2005 the full Commission met to consider the proposed rules and all of the public comment received. They also held a public meeting on the proposed rules on that date. At the conclusion of the meeting, the full Commission approved the rules unanimously with an effective date of July 1, 2005.

The Rules Review Commission was scheduled to consider the new rules at their June 15, 2005 meeting. However, prior to that meeting the Commission received two requests for a fiscal note review by the Office of State Budget and Management (OSBM). OSBM has ninety days to respond and the Rules Review Commission cannot take action until that process is complete. In addition, the Rules Review Commission received thirty-five (35) letters objecting to the rules and requesting legislative review. As a result, in accordance with G. S. 150B-21.3 (b1), the earliest date on which the permanent rules can become effective is the thirty-first (31st) legislative day of the next Session of the General Assembly.

The Department of Health and Human Services has investigated a variety of options for expediting the implementation of these rules. In accordance with the Administrative Procedures Act, the earliest possible date by which temporary rules could be enacted would be October 1, 2005, and only then if the Rules Review Commission agrees that the need for the rules meets the criteria for temporary rules outlined in statute.

Appendix

Appendix A: Violation Descriptions Ranked from Least to Most Serious

Violation Descriptions Ranked from Least to Most Serious

Standard Deficiency: A standard deficiency is a relatively minor violation that requires a plan of correction, but has no fine or sanction.

Example: Staff failed to administer a client's Depakote for three mornings in a row when the doctor's order was to administer Depakote twice a day. No negative affects, client did not have any seizures.

Type B: A Type B Violation (G.S. 122C-24.1) is a violation of rule that relates to the health, safety or welfare of a client, but does not result in substantial risk that death or serious physical harm will occur. This violation requires a plan of correction, and if it is not corrected upon follow up, a civil penalty is assessed for each day the deficiency continues beyond the date specified for correction.

Example: Staff failed to administer a client's morning Depakote for 2 weeks when the doctor's order was to administer Depakote twice a day. Client had a seizure which resulted in no injury.

Type A: A Type A Violation (G.S. 122C-24.1) is a violation of rule that results in death or serious physical harm, or in substantial risk that death or serious physical harm will occur. This violation requires a plan of correction, a fine is assessed, and if it is not corrected upon follow up, a civil penalty (higher than a Type B) is assessed for each day the deficiency continues beyond the date specified for correction. In addition, if the Type A violation is in client rights (Article 3 of G.S. 122C), there is an additional sanction that prohibits the provider from opening any other facilities for a specified amount of time. This can be from 6 months to 5 years depending on criteria also spelled out in statute.

Example: Staff failed to administer a client's Depakote twice a day for 2 weeks as ordered by the doctor. Client had multiple seizures during these 2 weeks with the last seizure resulting in the client falling down a flight of stairs, breaking his arm, and requiring surgery.

Provisional: A provisional license can be given to a provider for a period not to exceed six months, if they are temporarily unable to comply with a rule or rules. When a facility has its license downgraded to provisional, they are unable to obtain a license for a new facility or service for 5 years from the reinstatement date of their license.

Suspension of Admissions: A facility is not allowed to admit any more clients, but can continue to serve the clients that are currently in residence. The suspension of admission is assessed during a follow up survey to determine if the facility is in compliance and the suspension can be lifted.

Summary Suspension: The facility must suspend total operation of the program, including immediate removal of all clients or residents from the facility. However the facility may keep their license pending resolution of the issues or further action. Other involved agencies are notified at the time of a summary suspension so they can relocate their clients. The provider is unable to obtain a license for a new facility or service for 5 years from the reinstatement date of their license.

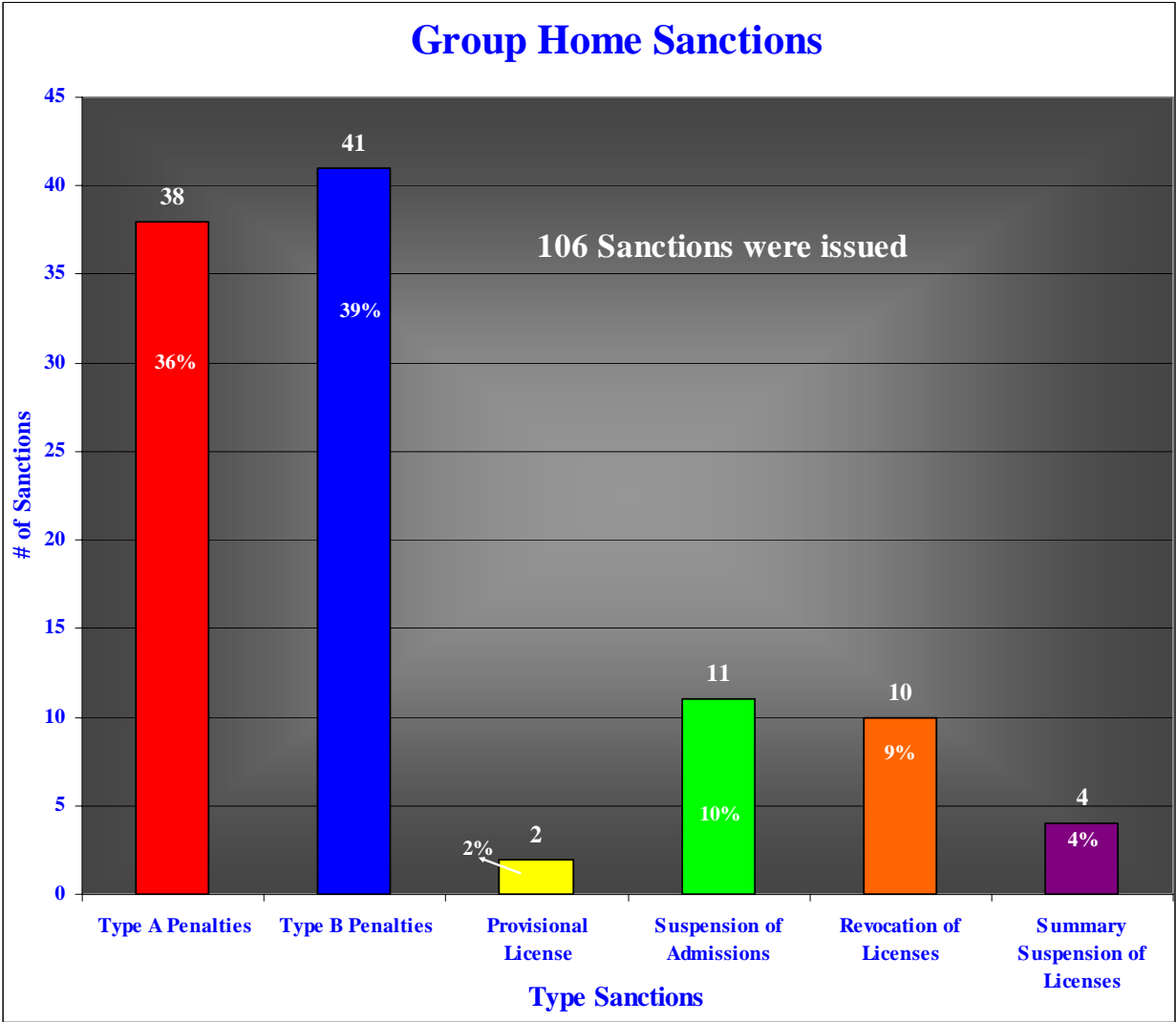
Revocation: The provider's license is terminated and the facility closed. The provider is unable to obtain a license for a new facility or service for 5 years from the date of the revocation.

Tables

Table 1: Recap of Administrative Sanctions

Table 2: Recap of Administrative Sanctions By County

Table 1



Recap of Administrative Sanctions By County

Table 2

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County	Number of Onsite Inspections			Types of Administrative Sanctions							Percentage of Total Statewide Sanctions
		Number of Facilities Sanctioned	Percentage of Facilities Sanctioned in the Co.	Type A	Type B	Provisional License	Suspension of Admissions	Revocation of License	Summary Suspension of Licenses	Total Sanctions	
Alamance	10	1	10.0%		3	1	1			5	4.7%
Alexander	0									0	
Anson	4									0	
Ashe	0									0	
Avery	1									0	
Beaufort	7									0	
Bertie	7	1	14.3%	1						1	0.9%
Bladen	4									0	
Brunswick	8									0	
Buncombe	8									0	
Burke	10									0	
Cabarrus	31	1	3.2%	1						1	0.9%
Caldwell	5									0	
Camden	1									0	
Caswell	2									0	
Catawba	10									0	
Chatham	3									0	
Chowan	2									0	
Cleveland	24	2	8.3%		2					2	1.9%
Columbus	8									0	
Craven	8									0	
Cumberland	97	13	13.4%	8	6		2	1		17	16.0%
Davidson	7									0	
Davie	7									0	
Duplin	4									0	
Durham	33	1	3.0%	1						1	0.9%
Edgecombe	1									0	
Forsyth	28	3	10.7%	2	3					5	4.7%
Franklin	1	1	100.0%		1					1	0.9%
Gaston	40									0	
Granville	5	2	40.0%	2			2	2		6	5.7%
Guilford	75	7	9.3%	4	2	1	2	2	1	12	11.3%
Halifax	1									0	
Harnett	11	1	9.1%	1						1	0.9%
Haywood	1									0	
Henderson	2									0	
Hoke	26	1	3.8%		1					1	0.9%
Iredell	13									0	
Jackson	2									0	
Johnston	21									0	
Jones	2									0	
Lee	5									0	
Lenoir	8	1	12.5%		1					1	0.9%
Lincoln	9									0	

Recap of Administrative Sanctions By County

Table 2

County	Number of Onsite Inspections			Types of Administrative Sanctions							Percentage of Total Statewide Sanctions
		Number of Facilities Sanctioned	Percentage of Facilities Sanctioned in the Co.	Type A	Type B	Provisional License	Suspension of Admissions	Revocation of License	Summary Suspension of Licenses	Total Sanctions	
Macon	1	1	100.0%	1				1	1	3	2.8%
McDowell	2									0	
Mecklenburg	135	7	5.2%	2	3		2	3	2	12	11.3%
Montgomery	2									0	
Moore	6									0	
Nash	4									0	
New Hanover	18	3	16.7%		3					3	2.8%
Northampton	2									0	
Onslow	13	1	7.7%		1					1	0.9%
Orange	5	2	40.0%	2	1					3	2.8%
Pasquotank	6									0	
Pender	1									0	
Person	1	1	100.0%	1						1	0.9%
Pitt	28	2	7.1%	2	2					4	3.8%
Randolph	7									0	
Richmond	5									0	
Robeson	16									0	
Rockingham	17	1	5.9%	1						1	0.9%
Rowan	27									0	
Rutherford	6									0	
Sampson	7									0	
Scotland	4	1	25.0%		1					1	0.9%
Stanly	10									0	
Stokes	1									0	
Union	26									0	
Vance	5	1	20.0%		1					1	0.9%
Wake	65	10	15.4%	6	5					11	10.4%
Warren	3	1	33.3%		1		1	1		3	2.8%
Watauga	1									0	
Wayne	7	1	14.3%		1					1	0.9%
Wilkes	3									0	
Wilson	8	4	50.0%	3	3		1			7	6.6%
Yadkin	1									0	
Totals	995	71	7.1%	38	41	2	11	10	4	106	100.0%