NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

REPORT OF PUBLIC HEARING
May 11, 2021
10:00 A.M.

Via Conference Call

Division Staff Present:
Nadine Pfeiffer, Rule-review Manager
Diana Barbry, Rule-making Assistant
Megan Lamphere, Chief, Adult Care Licensure Section
Libby Kinsey, Assistant Chief, Adult Care Licensure Section
Tichina Hamer, Adult Care Licensure Section

Others Present:
Frances Messer, NC Assisted Living Association
Jeff Horton, NC Senior Living Association

Purpose of Hearing
This is the teleconference public hearing for the Licensing of Adult Care Homes of Seven or More Beds, and the Licensing of Family Care Homes proposed rule adoptions and fiscal note for rules 10A NCAC 13F .1801 and .1802, and 10A NCAC 13G .1701 and .1702.

The purpose of this meeting is not to discuss or debate the rules but rather, to accept comments from the public on these proposed rule adoptions. The Division will receive public comments through close of business on June 1, 2021. All comments, including those from this public hearing, are considered prior to the Medical Care Commission adopting the proposed rules and submitting them to the Rules Review Commission for approval.

Hearing Summary
The public hearing was opened via conference call by Nadine Pfeiffer at 10:00 a.m. Attending via conference call were two members of the public as listed above. Two oral comments were recorded for the rules and fiscal note. The oral comments recorded is as follows:

1. Frances Messer, NC Assisted Living Association - Read comments from a letter submitted November 11, 2020 and again today via email (Attached).

Prior to reading the letter, Ms. Messer said, "afterwards I want to go on record to make a comment or two. I would like to say also that our membership, in addition to this letter representing the membership of the NC Assisted Living Association, also want to have the opportunity, and will make public comment between now and the end of the comment period, but we just did not have time to gather everything together."

After reading the letter, Ms. Messer said, "I would like to add to it, the public verbal opportunity to say that we have worked with the Department and many, many, many times and have think that have made a lot of success in getting to where we are now with the permanent rule that has been accepted already by the Medical Care Commission. And we appreciate and hope that this opportunity to speak will be considered as we go forward. The only thing that we would like to add from NCALA, is their opposition is still to the requirement of being in sync in writing of rules and policies and being completely in sync with the CDC recommendation because they do change. And also, we still have a problem with the fiscal note. We do not feel that the fiscal note is adequate. That's all I'm going to say at this point, but we will be writing and submitting more comments from individual members."

2. Jeff Horton, NC Senior Living Association – said "Thank you, and Good Morning to everyone. I want to thank DHSR, and the Commission for considering provider and industry input into the infection control rules. While we appreciate the Commission's intent to provide for comprehensive infection control standards, there are a number of concerns we have regarding the proposed permanent rules.

First is the reference to the Centers for Disease Control, or CDC, website providers would be required to use to develop and implement their infection control policies and procedures. As was pointed out during the Commission's meeting on March 10th (3/10/20), information on the CDC website constantly changes and contains links to other websites that constantly change. Therefore, to expect any provider, let alone a Family Care Home or small Adult Care Home with limited resources, to check the CDC website, compare to current policies and procedures, update and make changes to the policies and procedures, and then train their staff on these changes, we believe is completely unreasonable. We believe that the Commission should explicitly state what they would like required in the rule. And preferably, we would like DHSR to develop a training program the providers can use similar to the bloodborne pathogen training that has been in place for almost 10 years and has worked, we believe, fairly well.

Second is the fiscal analysis of the rules prepared by the Department and OSBM. Based on our review of the analysis, we believe it greatly underestimates the costs associated with implementing and complying with the rules. The first time is the time required to provide staff training is estimated at $365,380 annually, which is based on an average of 30 Adult Care Home employees and five Family Care Home employees. We are uncertain where DHSR and OSBM got these numbers or how they were calculated. NCSLA, with the help of its members, conducted an analysis of the training costs associated with implementing these rules and came up with the cost of about $1.125

million dollars for 3,000 beds, 15,000 employees and that would be 75,000 hours for the training. We will be including our calculations in our written comments to the rules, but suffice it to say, that cost calculated by the state woefully underestimates the cost of training staff on the proposed infection control requirements.

The second is the time required to notify a resident or representatives. It was $9.52 for each weekly notification, and it said it was $2380 based on a 2018 aggregate outbreak data. We believe this figure is also grossly underestimated. While it was mentioned during the development of rules that providers can just send an email notifying families of an outbreak at the facility, it should be noted that many people do not use email on a regular basis, may not understand how to use email or may not even have an email account. However, most everybody does have a US Mail box. During an outbreak one of our members chose to notify residents families by US Mail for an 80-bed facility. A letter sent to the families cost the facility approximately $450, which includes writing, stuffing the letter, envelopes and postage. In addition, even if the facility would call their families there would be a labor cost involved including speaking with someone, leaving a message, or returning calls, etc. The labor cost to communicating to families can often run high especially when they want answers providers have to take time to explain what was occurring.

Another part of the fiscal note that we just were concerned about, was DHSR and OSBM calculated the cost of provider violations was estimated at $25,500. During an infection control outbreak during the normal course of providing care to residents, does DHSR really believe that fining and penalizing facilities is the right way to way to achieve the improvements in care. By using money that will be paid for fines and penalties for training is a good idea and it's often done, we would already be using facility resources to pay fines, hire lawyers, etc. that could otherwise be used to improve care but not be in the resident's best interest. In addition, since the rules apply to all providers, even those who chose to serve Medicaid beneficiaries, most of these facilities are already operating on razor thin margins and often experience cash flow problems just meeting payroll and keeping the facility maintained. Therefore, using the regulatory stick on providers ends up taking away from resources that be used for resident care. We believe a more collaborative approach would be more reasonable with the State and counties assisting providers that she can find, versus the, as I call it the 'whack a mole' approach experienced by many providers. While we realize this would require a paradigm shift, we believe the time has come for more sensible and less punitive regulatory oversight of Adult Care Homes. And with that, I want to thank the Commission and DHSR for considering our comments. Thank you very much."

Adjournment

These comments will be taken into consideration by the Agency. The hearing was adjourned at 10:15 a.m.

Respectfully Submitted,

Nadine Pfeiffer, Rule-review Manager
May 11, 2021

Attachments

Public Hearing Teleconference Attendance
Adult Care Home and Family Care Home Rules
10A NCAC 13F .1801 & .1802; 10A NCAC 13G .1701 & .1702
May 11, 2021 10:00 a.m.

Name	Representing	Speaking Yes(Y)No(N)
Frances Messer	NC Assisted Living Association	Y
Jeff Horton	NC Senior Living Association	Y

NORTH CAROLINA
ASSISTED LIVING ASSOCIATION

Submitted for Permanent rules
public hearing
DHSR received 5/11/21

NCALA
3392 Six Forks Road
Raleigh NC 27609

November 11, 2020

Nadine Pfeiffer
809 Ruggles Drive
2701 Mail Service Center
Raleigh, NC 27699-2701
Via Email to DHSR.RulesCoordinator@dhhs.nc.gov

Re: ***Comments of the NC Assisted Living Association to Proposed Permanent Infection Control Rules Applicable to Licensed Adult Care Homes and Family Care Homes***

Dear Ms. Pfeiffer:

I am writing on behalf of the NC Assisted Living Association ("NCALA") to offer comments on rules pending for public comment before the Medical Care Commission, specifically 10A N.C. Admin. Code 13F, sections .1801 - .1802 and 10A N.C. Admin. Code 13G, sections .1701 – .1702 ("the rules"). These rules, taken together, would impose permanent Infection Control procedures on North Carolina adult care homes and family care homes. NCALA represents both adult care homes and family care homes.

When the Rules were first proposed back in early October of 2020 during the COVID pandemic ("the pandemic"), NCALA worked with the Department to help fashion and implement the Rules as temporary rules during the COVID public health emergency. In addition, NCALA supported adoption of the rules as *temporary* rules. However, because of the nature of the pandemic, the rules were developed quickly and only as temporary rules and NCALA does not support their adoption as permanent rules because more time and input is required to develop appropriate infection control rules that will govern affected providers both during public health emergencies and during non-emergency periods of operation.

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NCALA

To be clear, NCALA supports the development and implementation of permanent rules governing infection control policies and procedures, programs, and reporting obligations in adult care homes and family care homes. However, NCALA does not support adoption of the current temporary rules as permanent rules whose application would extend beyond the current pandemic.

NCALA believes that permanent infection control rules applicable to adult care homes and family care homes should be developed outside the context of a public health emergency, with the full participation of all affected stakeholders, when all affected parties have more time to offer input into and have discussions about the substance of such rules. NCALA encourages the development of such permanent rules as quickly as possible, but also believes that sufficient time must be dedicated to the development of such important rules and, as noted, with the thoughtful participation of all affected stakeholders.

NCALA looks forward to participating fully in the development of appropriate permanent infection control rules. Please let me know if I can provide additional information regarding NCALA's position on the Rules at this time. We appreciate the opportunity to offer these comments.

Sincerely,

Frances Messer

Frances Messer
President and CEO
NC Assisted Living Association