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May 28, 2021

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

Subject: Public comment regarding proposed permanent rules for infection control: 10A NCAC 13F .1801, 10A NCAC 13F .1802, 10A NCAC 13G .1701 and 10A NCAC 13G .1702

The North Carolina Senior Living Association (NCSLA) wishes to thank the North Carolina Medical Care Commission for considering provider and industry input into the above referenced 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 - Rules 13F .1801 and 13G .1701: There are references to the Centers for Disease Control or CDC website that 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, 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 their policies and procedures and then train their staff on these changes, is completely unreasonable. We believe the Commission should explicitly state what they would like required in the rule and preferably have the Division of Health Service Regulation in collaboration with the Division of Public Health, develop and approve a training program that providers can use, similar to the blood borne pathogen training that has been in place for almost 10 years and has worked reasonably well.

Second - The fiscal analysis of the rules prepared by the Department and Office of State Budget and Management (OSBM) is concerning. Based on provider review of the analysis, we believe it greatly underestimates the costs associated with implementing and complying with the rules.

- **The first item is the time Required to Provide Staff Training is estimated at \$365,380 annually (based on average of 30 adult care home employees and 5 family care home employees)**
 - We are uncertain where DHSR or OSBM got these numbers or how they were calculated. NCSLA, with the help of its members, conducted an analysis (See page three) of the training costs associated with implementing these rules and came up with a cost of \$1,125,000 for approximately 30,000 beds, 15,000 employees and 75,000 hours of training.

- **The Time Required to Notify Resident or Representatives \$9.52 for each weekly notification (\$2,380 based on 2018 Aggregate Outbreak data) is grossly underestimated.**
 - While it was mentioned during the development of the rules that providers can just send an email notifying family of an outbreak in a 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 everyone does use US mail. During a recent COVID-19 outbreak, a NCSLA member chose to notify resident families by US mail and for an 80-bed facility, the letters sent to the families cost the facility approximately \$450.00, which includes writing, stuffing the letter, the envelope and postage. In addition, even if the facility calls all their families there would be labor costs involved including speaking with someone, leaving a message, returning calls, etc. The labor costs of communicating to families can often run high especially when they want answers and providers have to take the time to explain what is occurring.

- **The fiscal note also contained the Cost of Provider Violations Estimated \$25,500**
 - During an infection control outbreak or in the normal course of providing care to residents, does DHSR really believe that fining and penalizing facilities, is the right way to achieve improvements in care? While using money that would be paid for fines and penalties for training is a good idea, using facility resources to pay fines, hire lawyers, etc. that could otherwise be used to improve care may not be in the residents' 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 in just meeting payroll and keeping the facility maintained. Therefore, using the regulatory "stick" for purposes of essentially beating providers into submission typically results in taking away from resources that could be used for resident care. A more collaborative approach would be more reasonable with the state and counties assisting providers in achieving compliance versus the "whack a mole" approach experienced by many providers. We realize this would require a paradigm shift, but we believe the time has come for more sensible and less punitive regulatory oversight of adult care homes.

We again thank the Commission and DHSR for considering our comments. If you have questions regarding any aspect of this letter, please do not hesitate to contact me.

Sincerely,



Jeff Horton, Executive Director
NC Senior Living Association

Attachment Detailing Training Costs Associated with Infection Control Rules

Adult and family care home beds = 30,000 beds

Estimated 15,000 employees for 30,000 beds

*15,000 employees x 5.0 hours infection control training/employee (see below) = 75,000 hours in training

**75,000 hours x \$15.00/hour = \$1,125,000.00

*5 hours of training/employee is based on the below requirements: Please note employees must not only receive this training during orientation but also annually.

Calculation of time needed to complete required infection control training

Module 6A	Principles in Standard Precautions	50 minutes
Module 6B	Principles of Transmission-Based Precautions	50 minutes
Module 7	Hand Hygiene	50 minutes
Module 9	Respiratory Hygiene and Cough Etiquette	30 minutes
Module 11A	Processing Re-useable Resident Care Equipment	60 minutes
Module 11B	Environment Cleaning and Disinfection	60 minutes
<u>Total Time:</u>		<u>300 minutes or 5 hours/employee</u>

**\$15/hour is average cost to a facility based on an average wage of \$11/hour + workman's compensation and other expenses/employee. In facilities where wages are higher, then the cost of training/employee will, of course, be higher.