



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

REPORT OF PUBLIC HEARING

August 7, 2024

11:00 A.M.

Division Staff Present:

Shanah Black, Rule-review Manager
Diana Barbry, DHSR, Rule Assistant
Jeff Harms, Chief, DHSR/Construction
Tammy Sylvester, DHSR/Construction
Megan Lamphere, Chief, DHSR/Adult Care Licensure
Shalisa Reynolds, DHSR/Adult Care Licensure
Libby Kinsey, Asst Chief, DHSR/Adult Care Licensure
Tameka Rigsbee, DHSR/Adult Care Licensure

Others Present:

Eric Hunt, Attorney Generals Office
Frances Messer, NCALA
Randy Jackson, NCALA/Spring Arbor
Tara Muller, DRNC
Jeff Horton, NCSLA

Purpose of Hearing

This is the public hearing for the proposed readoption and amendment and the fiscal analysis of Licensing for Adult Care Homes of Seven or More Beds and Licensing of Family Care Homes rules 10A NCAC 13F .0206, .0301, .0302, .0304-.0307, .0309-.0311, .0801, .0802, .1304, .1501, .1601-.1605. 10A NCAC 13G .0206, .0301, .0302, .0305-.0309, .0312, .0315-.0318, .0801, .0802, and .1601-.1605

The purpose of this meeting is not to discuss or debate the rules and fiscal note but rather, to accept comments from the public on these proposed rules and fiscal note that was prepared for these rules. The Division will receive public comments through close of business on August 16, 2024. All comments, including those from this public hearing, are considered prior to the MCC adopting the proposed rules and submitting them to the Rule Review Commission for approval.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

OFFICE OF THE DIRECTOR

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Hearing Summary

The Public Hearing was opened by Shana Black at 11:00 am. Attending were four members of the public as listed above. A total of two oral comment was recorded for the rule(s) as follows:

Francis Messer, President CEO North Carolina Assisted Living Association and I'm speaking today on behalf of our board and our membership and Randy Jackson, NCALA so we do have letters from two other board members that we will leave at the end of the meeting but basically the rules that we wanted that we want to object too are just simply 13 F.0309 and a comment that to say and this is one that it's proposed for substantive changes and we've been like that certainly is an understatement as to how much this rule was actually changed. I copied the rule in the packet on the way that it looks like currently, and it went from one page probably 20 lines to four pages.

The main thing we want to say is we want to assure you that the unannounced fire rehearsals that you plan should absolutely remain the same as far as the interpretation. As it is stated in the current rule does use rehearsals and currently we are not required to move the residents in the middle of the night or in the middle of the day or from the rooms upstairs or downstairs and we the association want to clarify the rehearsal rule or perhaps of a question and answer that is official, so that whenever the surveyors in the county monitors or survey and that they would all have that same understanding of no we don't have to move residents. The other rule that we're asking to look at is of .0309E-1A and .0309E-1K and .0309E-L and this basically they speak to the requirement of agreements, signed contracts.

Contract is not used in the written agreements with local hospitals and nursing homes, sister facilities and others as far as whenever we have to evacuate and move to the residents, that we have those signed contractual or agreement signed and we feel like that's a lot of paperwork and one of their providers Ridge care as a small provider they have 4 communities and I think they're all on the coast and they've had to evacuate a number of times and actually in their letter they document the experience that they had in evacuating those residents and having had contracts probably involved that's required and one of them so that's the context that we would like to know those agreement.

The other basic comment I would like to make with that is if those agreements they've signed or put into rule, then every year when the surveyors come they ask to see their book and pull it out it opens up a chance for deficiencies, so you would think we don't have a paper compliance there we just think that that's just too much paperwork and we would like to see the fiscal note reevaluated to look at the amount of work that it would be for the small facilities and small family care homes and large communities a lot of extra work to do that there would be needs to be more money allocated to that.

The North Carolina Assisted Living Association would like to just put on the table the possibility as was done with the Infection Control Template and Infection Control Rules several years ago was very helpful to us the providers whenever the state collaborated and said it was able to based on research and based on experts develop those for us so that we can now and I think we've been very successful with that. Now I'm hoping that the battle would show that in using those we've actually gotten better with their procedures and their infection control from both policies and I would like to ask that the state the agency remember the DHHS would look at doing that for

emergencies, after watching the extent that we're looking at hazards and identifying their own hazards within the community and our Ridge Care communities that are on the NC Coast.

We understand you know the priority and that plan, but it would just be of great value if they ever wanted Life Safety Emergency folks if everybody could come together and give us guidelines and those guidelines could be t put into templates, so that everybody would have a consensus based on the research. So that's pretty much what we wanted to add, just those rules and to ask that you look at those agreements. We also mentioned that the staffing have the same agreement that if we have an agency staffing personnel issues, where are we going to get staff if we're in the middle of the tornado, even today we're all you know waiting and anticipating everybody's going to be hit and the likelihood that we would be able to get agency staff even with that contract is probably not going to happen and even with sister communities like a larger communities have been able to work and in some previous cases able to move residents into their own sister facilities, but the small folks the independent owners just do not have that. Megan and thank you for sending out the memo ahead of time with information, but basically the preference is to admit Adult Care Home residents to other Adult Care Homes and that you know makes sense is the best thing to do and that that would is not even possible for many.

Jeff Horton I'm the executive director of the North Carolina Senior Living Association and I'm representing the Association Members and Executive Directors. I'm here to comment specifically on the 10A NCAC 14F .0309 and 10A NCAC 13G .0316. Basically what we believe is the current rules for disasters and emergencies contained in those sections are sufficient, we don't believe these changes over stated the examples given in the Fiscal Impact Statement, I think there were six examples and now just because you have six examples we don't believe that it necessitates rewriting the entire section and putting forth a whole new set of onerous and a very difficult regulations, which I believe would be difficult to our providers.

The other thing is from what we can tell what the agency has done is they've taken the federal regulations that the Centers for Medicare and Medicaid Services put into effect for hospitals and nursing homes in March of 2021, and taking much of that information and put into these new rules in .0309 and .0306, those provider rules were much more sophisticated and they have more money and they have more capacity and capability to comply with those standards and we contend putting those standards in place for Residential facilities.

Again, it's excessive and not wanted, we also questioned the fiscal impact that it will have on the agencies, which we believe will be very significant. The other thing I want to mention is our association will be submitting written comments prior to August 16th, that will be more detailed but in general we think many of the new rules being proposed are unclear and ambiguous. I left out and will be left open to interpretation by DHHS regulators and we already have difficulty interpreting and applying rules and an adjective in that consistent fashion. The last thing I just want to mention is the process for doing these rules in .0309 and .0316, we felt was very hurried prior to the April 22nd memo that the agency sent out to interested parties, there was a world review group and we reviewed most of the rules, however none of these rules that are being proposed were ever discussed and the rules review group was disbanded right after the agency sent out the new rules.

Everything in the new rules for .0309 and .0306 we've never discussed and there's no input from the providers or other stakeholders and we believe that if we had there been the agency probably would not have come up with what they did. We just started and the whole process appears to be disorganized and hurried and if these rules were to go forward and become effective, we think providers will be like dealing with something that they're going to find it extremely difficult to comply with and to and also protect our residents.

Adjournment

These comments will be taken into consideration by the Agency. The hearing was adjourned at 11:15 a.m.

Respectfully Submitted,

Shanah F Black

Shanah Black, Rule-review Manager

August 7, 2024

Attachments