Dear Shanah,

It was nice meeting you last week. We appreciate the opportunity to weigh in on the proposed rule changes identified here: Volume-38-Issue-24-June-17-2024_0.pdf (nc.gov). Thank you in advance for considering the following comments from Disability Rights North Carolina:

**1. Resident assessments 10A NCAC 13F .0801 / 10A NCAC 13G .0801 / Care plans**

· In order to ensure that the rights of residents are being met, resident assessments should performed more frequently than annually. Every two to three months is more reasonable to allow for consideration of changes in natural supports, improvements in health conditions, new availability of assistive technology or community-based support, etc. If staffing levels in the facilities do not allow such assessments, we suggest that the assessments be done by care managers or health providers.

· Assessment should include not only the residents' needs but also whether and to what extent those needs are being met. For example, "dietary needs" should include not just whether the resident has needs, restrictions, or allergies but also whether the current meal plan is meeting those particular needs. Similarly, "assistive technology" should include not just what devices are currently used, but whether the resident could benefit from AT, has access to AT, understands how the AT works, and was provided and has regular access to that AT.

· Assessments should include an Olmstead / least restrictive settings question regarding whether the resident is in the least restrictive setting necessary to meet their needs. The assessment should also include what steps are being taken to help the resident return to the community. Questions may also include the residents' ability to access the community on visits or field trips, move freely about the facility and grounds as appropriate, engage with other residents, non-disabled people, etc. Questions may also include why the resident is seeking to live in the facility and not the community, what are the barriers to them living in the community, and what services, if provided, would enable them to live in the community. It may be helpful in some instances to include a question about whether the resident is aware of their rights to receive treatment in the least restrictive setting and their rights to use a telephone, etc.

**2. Star rating info**

10A NCAC 13G .1602 / 10A NCAC 13F .1602 We appreciate section (d) requiring the star rating to be published on DHSR website. We request that (d) include a requirement that the publication be updated at least quarterly and be published in a location easily accessible to the public and search-engine enabled such that the use of the search function for "facility ratings, etc." yields a link to the site. We also request that the star ratings be published in an accessible format, such as alphabetically by generally-accepted location name, to increase helpfulness for the general public.

## 3. Physical restraints

10A NCAC 13F .1501 / 10A NCAC 13G .1501 Disability Rights North Carolina advocates for the elimination of the use of restraints. The HCBS settings rule requires that an HCBS setting ensure an individual's "freedom from coercion and restraint." 42 C.F.R. § 441.301(c)(4)(iii). Notably, this requirement is not subject to modification through a person-centered service plan. See 42 C.F.R. § 441.301(c)(4)(vi)(F). We believe that the same rules should apply in facilities. Although these rules changes stop short of prohibiting the use of restraints, we do appreciate the changes to clarify and minimize the use of restraints, which we see as a step in the right direction. If restraints continue to be permitted, we appreciate the change requiring written approval, and the reporting requirements. However, in order to ensure that "approval" or "consent" is truly "informed consent," we would request that the facility must demonstrate the actual restraint or a diagram/image of the restraint that would be used, explain the medical reasons, and explain why alternatives would not work in this situation. That way, public guardians and others will truly understand exactly what they are approving.

In section (b) we would like the facility to also inform about available alternatives to the use of restraints. In section (d) and (e) we would like the order to include a determination that the type of restraint indicated is the least restrictive type of restraint available and appropriate for the resident.

The rules are unclear about whether the facility staff has to meet after an "emergency" restraint has been used and discuss why the restraint was used, whether alternatives could be used in the future, etc. If the emergency is arising from behavioral health issues, we request some requirement that the team meet and develop something similar to a Behavior Intervention Plan for the resident if they do not already have one. Such a plan would help the resident in future emergencies and would help staff who may be on duty during the emergency but not familiar with the resident.

## 4. Emergency / disaster planning / evacuation plans

10A NCAC 13F .0309 We appreciate the change to incorporate *unannounced* rehearsals of fire evacuation plans, since many staffing deficiencies and oversight problems occur outside normal business hours when temporary or less trained staff may be on site. Incorporating unannounced rehearsals will increase the likelihood that facilities discover and correct weaknesses before a real emergency.

10A NCAC 13G .0316 We would appreciate the addition of unannounced rehearsals in these facilities as well, for the reasons set forth above.

## 5. Housekeeping and furnishings

10A NCAC 13F .0306 & 10A NCAC 13G .0315 Regarding the requirements for access to a working television, radio, and phone, we request an additional requirement that those devices be connected to WiFi. As we learned during the pandemic, WiFi is incredibly important to access telehealth and other services.

## 6. Physical environments / outside entrances and exits

10A NCAC 13F .0305 / 10A NCAC 13G .0312 We request an additional requirement of an automatic door for wheelchair users in both of these sections, as we have received complaints from residents who are unable to come and go without assistance opening the door.

## 7. Basic Law Enforcement Training

12 NCAC 09B .0205 Thank you for the rules change requiring 24 hours of “crisis intervention: interacting special needs populations.” We hope and request clarification as to whether those populations include only those populations with mental health conditions or also those with other disabilities such as I/DD autism, deaf individuals, etc.

Thank you for considering these comments. As always, we would be glad to meet with you to discuss this information in more detail upon request.

Best regards,

Tara

DISABILITY RIGHTS NORTH CAROLINA

NORTH CAROLINA’S PROTECTION AND ADVOCACY SYSTEM

**TARA MULLER**
DRNC Policy Attorney

tara.muller@disabilityrightsnc.org
919-856-2195
877-235-4210
919-856-2244 (fax)
TTY callers, dial 711

**801 Corporate Center Drive, Suite 118, Raleigh, NC 27607**
**www.disabilityrightsnc.org | Support Our Work**
**Twitter Facebook LinkedIn YouTube**