Experience. Education. Advocacy.

November 15, 2024

Ms. Shanah Black
809 Ruggles Drive
2701 Mail Service Center
Raleigh, NC 27699
Email: dhsr.rulescoordinator@dhhs.nc.gov

Re: North Carolina Senior Living Association Comments to Proposed Medical Care Commission Rules Published September 16, 2024 in the North Carolina Register, Volume 39, Issue 06, pages 282-316

Dear Ms. Black,

I represent the North Carolina Senior Living Association and the many adult care home and family care home members and associate members that comprise the Association. The majority of our members provide care and services to Medicaid beneficiaries and many are family owned and operated businesses, which have been providing care to our seniors and adults with disabilities for decades.

First of all, I would like to say that our Association and its members continued to be concerned regarding the republished rules in 10A NCAC 13F .0309 and 13G .0316 - FIRE SAFETY AND EMERGENCY PREPAREDNESS PLAN. While DHSR and the Commission have made efforts to streamline the rules compared to the previous version published on June 17, 2024, we still have concerns regarding the capacity and capability of adult care and family care homes to comply with the new rules in a manner that will satisfy DHSR when the time comes to regulate compliance.

Concerning DHSR's Fiscal Impact Analysis and justification for the new rules under 13F .0309 and 13G .0316, some of the instances leave out important details where facilities actually took actions to protect their residents. In addition, in the examples cited where facilities received citations and administrative sanctions, it should be noted that all of these issues were regulated by DHSR within the current regulatory framework and therefore, we believe this nullifies the need for the revised regulations the agency is now proposing.

In addition, it should be noted that DHSR is also responsible for regulating mental health, developmental disability, and substance abuse services (MHDDSAS) facilities that are licensed pursuant to North Carolina General Statute 122C, Article 2 and that many of these facilities, particularly the 24-hour residential facilities, bear a resemblance to family care homes. For example, there are approximately 1,830 supervised living facilities licensed under 10A NCAC 27G .5600 which are 2-6 bed homes in residential communities that also serve disabled populations and with over 1,100 of these homes serving individuals with intellectual and developmental disabilities. However, to our knowledge, DHSR has made no effort to work with the rule-making body for the 27G rules, which is the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, to re-write or otherwise increase regulatory requirements for emergencies and disasters for these providers.

(Continued)

Not that we believe these providers need more rules for emergencies and disasters, but it begs the question why adult care and family care homes are facing increased regulatory requirements in this area when it appears that both types of facilities serve disabled populations and the current emergency and disaster rules for facilities licensed under 27G are similar to the current rules for adult care and family care homes, which we argue have worked well for both provider types. For comparison, we have pasted the current rules for MHDDSAS facilities and adult care and family care homes below.

Current Emergency and Disaster Rule for MHDDSAS facilities

10A NCAC 27G .0207 Emergency Plans and Supplies
(a) Each facility shall develop a written fire plan and a disaster plan and shall make a copy of these plans available to the county emergency services agencies upon request. The plans shall include evacuation procedures and routes.
(b) The plans shall be made available to all staff and evacuation procedures and routes shall be posted in the facility.
(c) Fire and disaster drills in a 24-hour facility shall be held at least quarterly and shall be repeated for each shift. Drills shall be conducted under conditions that simulate the facility's response to fire emergencies.
(d) Each facility shall have a first aid kit accessible for use.

Current Emergency and Disaster Rules for Adult Care Homes (similar to Family Care Homes rules)

10A NCAC 13F .0309 Plan For Evacuation
(a) A written fire evacuation plan (including a diagrammed drawing) which has the written approval of the local Code Enforcement Official shall be prepared in large print and posted in a central location on each floor of an adult care home. The plan shall be reviewed with each resident on admission and shall be a part of the orientation for all new staff.
(b) There shall be rehearsals of the fire plan quarterly on each shift in accordance with the requirement of the local Fire Prevention Code Enforcement Official.
(c) Records of rehearsals shall be maintained and copies furnished to the county department of social services annually. The records shall include the date and time of the rehearsals, the shift, staff members present, and a short description of what the rehearsal involved.
(d) A written disaster plan, which has the written approval of or has been documented as submitted to the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the facility.

A quick comparison of the above rules shows the similarities and have worked for years to protect clients in MHDDSAS facilities and residents in adult and family care homes. Therefore, we fundamentally believe that the current rules are sufficient to protect both populations.

(Continued)

It should be noted that in March 2021, the Federal Centers for Medicare and Medicaid Services (CMS) issued new Emergency Preparedness rules for certain Medicare certified provider types, which include hospitals, nursing homes and other provider types that typically have more financial and personnel resources and are better equipped to comply with Federal Regulations. It appears that DHSR decided to take portions of the CMS Emergency Preparedness regulations and, without consideration of the financial impact and resource impact to adult and family care homes, have essentially copied and pasted them into the new rules text for adult and family care homes, which we argue are not only overly excessive, but we would argue that the majority of providers do not have the money, capacity, and otherwise, resources to comply with these rules. Just to put this in perspective, the existing rules under 13F .0309 and 13G .0316, which have been in place since 2005 and we contend are sufficient, only comprise six (6) rules. The new rules DHSR are proposing are a significant number of new rules, many of which have multiple requirements within each rule. That said, we commend DHSR and the Commission for reviewing the public comments submitted for the proposed rules published on June 17, 2024 and making changes accordingly; however, many of our concerns have not been addressed and below are comments regarding some of the rules published in the September 16, 2024 NC Register.

Regarding proposed rules in 13F .0309(d)(1)(2), which are pasted below for reference purposes. Please note that 13F .0309(d)(1)(2) is same language as found in 13G .0316(g)(1)(2).

(d) ~~A~~ Each facility shall develop and implement an emergency preparedness plan to ensure resident health and safety and continuity of care and services during an emergency. The emergency preparedness plan shall include the following: ~~written disaster plan, which has the written approval of or has been documented as submitted to the local 22 emergency management agency and the local agency designated to coordinate special needs sheltering during 23 disasters, shall be prepared and updated at least annually and shall be maintained in the facility.~~

(1) Procedures to address the following threats and hazards that may create an emergency for the facility:

(A) weather events including hurricanes, tornadoes, ice storms, and extreme heat or cold;

(B) fires;

(C) utility failures, to include power, water, and gas;

(D) equipment failures, to include fire alarm, automatic sprinkler systems, HVAC systems;

(E) interruptions in communication including phone service and the internet;

(F) unforeseen widespread communicable public health and emerging infectious diseases;

(G) intruders and active assailants; and

(H) other potential threats to the health and safety of residents as identified by the facility or the local emergency management agency.

(Continued)

(2) The procedures outlined in Subparagraph (d)(1) shall address the following:

(A) Provisions for the care of all residents in the facility before, during, and after an emergency such as required emergency supplies including water, food, resident care items, medical supplies, medical records, medications, medication records, emergency power, and emergency equipment;

(B) Provisions for the care of all residents when evacuated from the facility during an emergency, such as evacuation procedures, procedures for the identification of residents, evacuation transportation arrangements, and sheltering options that are safe and suitable for the resident 6 population served;

(C) Identification of residents with Alzheimer's disease and related dementias, residents with mobility limitations, and any other residents who may have specialized needs such as dialysis, oxygen, tracheostomy, and gastrostomy feeding tubes, special medical equipment, or accommodations either at the facility or in case of evacuation;

(D) Strategies for staffing to meet the needs of the residents during an emergency and for addressing potential staffing issues;

(E) Procedures for coordinating and communicating with the local emergency management agency and local law enforcement;

Comment:
Instead of putting the above rules in place, we believe it would be more efficacious if DHSR could develop a template that providers could use to assist in developing emergency and disaster plans as this would save time, effort and resources for providers that do not have the capacity or resources to write their own detailed plans. With the resources of DHSR, including the Office of Emergency Medical Services and their partnership with the Emergency Management under the Department of Public Safety, we believe providers and the residents they serve would benefit from a template that is comprehensive and takes into consideration the unique situations providers find themselves in when confronting emergencies and disasters.

Regarding proposed rules in 13F .0309 (l), (m) and (n) (pasted below for discussion purposes) and is similar language to 13G .0316 (o), (p) and (s)

(l) If the facility evacuates residents for any reason, the administrator or their designee shall report the evacuation to the local emergency management agency, the local county department of social services, and the Division of Health Service Regulation Adult Care Licensure Section within four hours or as soon as practicable of the decision to evacuate, and shall notify the agencies within four hours of the return of residents to the facility.

(m) Any damage to the facility or building systems that disrupts the normal care and services provided to residents shall be reported to the Division of Health Service Regulation Construction Section within four hours or as soon as practicable of the incidence occurring.

(Continued)

(p) If a facility evacuates residents to a public emergency shelter, the facility remains responsible for the care, supervision, and safety of each resident, including providing required staffing and supplies in accordance with the Rules of this Subchapter. Evacuation to a public emergency shelter should be a last resort, and the decision shall be made in consultation with the local emergency management agency or the local agency designated to coordinate and plan for the provision of access to functional needs support services in shelters during disasters. If a facility evacuates residents to a public emergency shelter, the facility shall notify the Division of Health Service Regulation Adult Care Licensure Section and the county department of social services within four hours of the decision to evacuate or as soon as practicable.

Comment:

- Why are providers required to contact DHSR within four hours? Calling the local folks within four hours is reasonable but why DHSR? It is our understanding that DHSR is not available after business hours, weekends or holidays. Therefore, we recommend the rule be changed to require providers to contact DHSR on the next state business day.
- What does *soon as practicable* mean? We find this term arbitrary and unless soon as practicable is defined, the phrase remains open to interpretation depending on which DHSR surveyor is conducting an inspection.

Regarding 10A NCAC 13F .1304

In reviewing the proposed rule changes for 10A NCAC 13F.1304 between what was posted in the June 17, 2024, Volume 38, Issue 24 of the NC Register and what was posted in the September 16, 2024, Volume 39, Issue 06 of the Register, it appears the language pasted below, including the old language that followed it from 1 - 11 have been eliminated.

(a) In addition to meeting all applicable building codes and licensure regulations for adult care homes, the special care unit shall meet the following building requirements. For facilities licensed prior to January 1, 2025, the following shall apply:

Comment:
We speculate that the reason this was eliminated is that the language in 13F .0301 below states that the physical plant rules each facility has to meet are the rules that were in effect at the time the facility was constructed or renovated. Therefore, the new rules in 13F .1304 would only apply to facilities or units being constructed or renovated after the effective date of the new rules. It would be beneficial if the Division and Commission could confirm or clarify if we are correct on this interpretation.

In summary, as stated in our previous comments dated August 15, 2024 and as we have outlined above, we contend that the proposed new rules for 10 NCAC 13F .0309 and 13G .0316 are unnecessary and the current rules and regulatory framework currently in place are sufficient to address disasters and emergencies in adult and family care homes. That said, we also believe that if DHSR wants to assist providers, they should work on providing a template for emergencies and disasters similar to what was done with infection control a couple of

(Continued)

years ago, and has worked well. Trying to re-write and pass new regulations to address each and every conceivable problem or situation that may occur in a residential setting is both excessive and unnecessary. Furthermore, if DHSR was so concerned about the examples given on pages 7, 8 & 9 of their Fiscal Impact Analysis, why didn't the agency move to pass temporary or emergency rules after these incidences occurred or similar to what was done with passage of the infection control rules during the COVID-19 pandemic? We contend that none of the examples listed rose to the level of putting in temporary or emergency rules because the current regulatory process was/is sufficient.

We believe it is not a coincidence that the number of adult care homes and family care homes in North Carolina have declined in the past 10 years. Whereas, in the past, there were nearly 600 family care homes, as of October 2024, there are now only 503 homes which is down 6 homes since we first commented on these rules on August 15, 2024. From what we have heard from both adult care and family care home providers no longer in the business is that the regulatory burden, inflationary costs of food, labor and supplies, and lack of sufficient reimbursement, particularly from Medicaid and State/County Special Assistance, has made it next to impossible to operate a home as many providers constantly experience cash flow problems and literally operate paycheck to paycheck. All of this at a time when North Carolina is riding the Silver Tsunami and there needs to be an effective continuum of care for our seniors, including assisted living provided by adult care and family care homes.

Therefore, we propose that DHSR and the Commission listen to our comments and put forth rules that providers can follow without unnecessary burden as they strive to take care of their residents. As such, and as stated earlier, we believe it would be more beneficial for DHSR and its emergency management partners to develop an emergency and disaster template for providers to use to prepare for these situations. Until reimbursement rates and resources increase significantly, there must be a more uniform and supportive approach.

Sincerely,

Jeff Horton

Jeff Horton, Executive Director
NC Senior Living Association

Cc: NC Medical Care Commission members