



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

October 22, 2024

10:00 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 General's Office
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 November 15, 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

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Hearing Summary

The Public Hearing was opened by Shanah Black at 10:00 a.m. Attending was one member of the public as listed above. A total of one oral comment was recorded for the rule(s) as follows:

Jeff Horton - NC Senior Living Association - We have some comments about the proposed rules regarding 13 F .0309 and what we would like to see under .0309 D1- D2, just for the agency instead of being prescriptive in roles like this, to develop a template for providers to use in disasters and emergencies, similar to what they did with the infection control rules, Some of the concerns about what's currently written under D-1 or it talks about developing and implementing emergency preparedness plans to ensure resident health or safety and then there's a variety of things that they have to take into consideration, and our main concern is that when you have catastrophic events such as the one that recently occurred in the western part of the state with Hurricane Helene, you can have your best laid plans but they all pretty much are useless given something that with such enormity and when it says ensuring the rule that means you got to do it no matter of what, when in fact it's impossible.

It would be nice if the Regulatory agency would give you thoughts about what the providers are actually capable of, but when the rule says that explicitly that means that the provider doesn't do this the Regulatory agency can take actions against the provider, including administrative sanctions and even closing the facility. So, we would rather see the template that providers can follow, versus prescriptive rules, which sometimes are impossible to comply with.

The other thing under 13 F .0309 under L, M and N all those rules talk about providers should contact the Adult Care Licensure Section within 4 hours or as soon as practicable, we don't really know what practicable means, are you going with the websters definition? It's a subjective term where we would like to see is the next business day instead of within 4 hours and like we had discussed previously I believe in one of the meetings that that if you have something happen on a Friday evening at midnight you know there's not going to be anybody at DHSR and so trying to contact them within 4 hours is kind of a waste of your time when you might be in the midst of a crisis, your time would be better spent dealing with the crisis and contacting them the next business day.

Next under 13 F .1304 and the special care unit rules, what we noticed is the between the language that was posted in June, versus September 16th, the September 16th for the rules appears that some of the language has been eliminated and what we believe is that the agency is trying to say is that if you were built prior to this date you have to comply with these rules, but if you were to build after this date or renovate it or whatever for special care unit, you have to comply with the new rules language about being built prior to a certain date was removed, and I believe it's because where it talks about the language under .0301 where it says you have to comply with the rules that were in effect at the time you're licensed or whatever I believe that's why that language was removed, but I'd like to have some confirmation from the agency. stop that lastly I'd like to make a comment that just about the fact that these rules especially the disaster and emergency rules are going to apply to residential facilities, there are a lot of rules that currently have been subject to in the past, however the same agency that regulates adult care homes also regulates mental health facilities licensed under general statute 122 CR 2 and the administrative code under 10 A NCAC 27G and there's about 1800 residential facilities under 27

G's that are super powerful. Do you want those rules that have really their emergency and disaster plans rule, it's kind of like what we have now prior to these new rules that you're proposing going into effect.

The disparity between these two types of facilities that actually are very similar in many ways, in fact if you're in a neighborhood that's got a supervised living home and you got one that's got a family care home you can't even really tell that much difference, they both have folks that have disabilities, however the supervised living rules have to develop an emergency disaster plan and share it with your local Emergency Management officials, so on and so forth and the agency.

As we can tell the Commission for Mental Health and Developmental Disabilities and Social Services has made no effort to readjust those rules to make them look like what you're proposing for adult care homes, so the disparity in terms of the two types of the facilities that appear the same in terms of service folks with disabilities in the community, one has proposed rigorous disaster and emergency rules that are very involved and it requires a lot of effort from the facility and a lot of accountability. Whereas the other type of home licensed under a different statute has none of this and again as I've pointed out we can't see that the agency that is responsible for mental health facilities has made any effort to adjust those rules and make them more in line with what you're proposing here and that's just a bit disturbing given that they're both served folks with disabilities. So, you've completely proposed different sets of standards and that's my comments. Chris Parker's comment was about the practical studies practice within 4 hours, and we all agreed on that.

Adjournment

These comments will be taken into consideration by the Agency. The hearing was adjourned at 10:13 a.m.

Respectfully Submitted,

Shanah Black, Rule-review Manager
October 22, 2024

Attachments