North Carolina Senior Living Association

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DHSR Received 11/16/20

November 16, 2020

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 temporary rules for infection control: 10A NCAC 13F .1801, 10A NCAC 13F .1802, 10A NCAC 13G .1701, and 10A NCAC 13G .1702

Dear Ms. Pfeiffer,

The North Carolina Senior Living Association (NCSLA) appreciates the efforts of the Division of Health Service Regulation (DHSR) and the North Carolina Medical Care Commission regarding the emergency infection control rules for adult care homes (10A NCAC 13F .1801 and .1802) and family care homes (10A NCAC 13G .1701 and .1702) in response to the COVID-19 pandemic. As a part of the rule-making process, we understand DHSR and the Commission are now in the process of making the emergency rules into temporary rules. Although the emergency rules were passed in response to COVID-19, it appears that DHSR and the Commission are on track to eventually impose permanent infection control rules for adult care homes and family care homes.

Our association, as well as the North Carolina Assisted Living Association, worked with DHSR when the above rules were first being considered in October of this year. While we appreciate the need for these rules to address certain standards providers need to adhere to in order to protect their residents and staff during the COVID-19 pandemic, we do not support making these rules permanent due to the increased costs of compliance, particularly on adult care homes and family care homes that receive fixed public funding from the state in the form of state/county special assistance for room and board and Medicaid for personal care services. Without increases in public reimbursement, many facilities that receive their funding from public sources (the majority of facilities in our state) would essentially be set up for failure. In addition, it should be noted that prior to the COVID-19 pandemic, there were already infection controls statutes and rules in place for adult care homes (13F rules) and family care homes (13G rules) including the following:

- NCGS § 131D-4.4A - Adult care home infection prevention requirements to prevent transmission of HIV, hepatitis B, hepatitis C, and other bloodborne pathogens;
- 10A NCAC 13F .1004(n) and 13G .1004(n) – Medication administration requirements to assure that medications are administered in accordance with infection control measures that help to prevent the development and transmission of disease or infection, prevent cross-contamination and provide a safe and sanitary environment for staff and residents; and
- 10A NCAC 13F .1211(a)(4) and 13G .1211(a)(4) – Written Policies and Procedures required for infection control.

We believe the above rules were working well for adult care and family care homes prior to the pandemic and continue to work well for facilities. That said, if DHSR and the Commission wants to add additional regulatory requirements regarding infection control as permanent rules, we believe this process needs to be completed after the current public health emergency has ended and not in reaction to the current pandemic. In addition, any rules that are considered need to have a complete and thorough fiscal impact evaluation before being approved.

The emergency rules and temporary rules being considered were, in part, in response to NCSLA's concern that DHSR, during its regulatory oversight of adult care homes during the COVID-19 pandemic, was citing facilities for not complying with Centers for Disease Control (CDC), NC Department of Health and Human Services (DHHS) and local health department guidelines and recommendations. We believed the Division's citing providers for not complying with guidelines and recommendations not only lacked authority, but was seen as ambiguous and unreasonable since the guidelines and recommendations continue to change and evolve as the pandemic has unfolded. In response and as noted earlier, DHSR determined that emergency rules were needed, which we believe was the correct decision to provide further requirements for providers during the pandemic; however, the rules that were developed and the temporary rules being considered, fall short in a number of areas.

Specifically, we have concerns with the rules in creating the same type of ambiguity, which we experienced when DHSR was citing facilities for not following guidelines and recommendations from the CDC, DHHS and local health departments. Specifically, proposed temporary rules 10A NCAC 13F .1801(b) and 13G .1701(b) state:

"(b) The facility shall ensure implementation of the facility's IPCP, related policies and procedures, and guidance or directives issued by the CDC, the local health department, and/or the North Carolina Department of Health and Human Services."

We believe requiring providers to constantly check, reconcile differences, revise policies and procedures, and train staff based on "guidance or directives issue by the CDC, the local health department, and/or the North Carolina Department of Health and Human Services" is difficult, if not impossible to achieve. For example, when it comes to following guidance or directives issued by local health departments, most any provider can tell you that guidelines and directives vary, sometimes greatly, depending which county your facility happens to be located. Although the state Division of Public Health issues guidance to local health departments, we have heard from a number of our members who have facilities in multiple counties throughout the state, that local health department guidance and directives have varied widely by county during the pandemic. Therefore, we request the Commission remove any reference to local health departments in the proposed rules. In addition, we request that DHSR and the Commission explicitly tell providers in rule, which specific CDC or the DHHS guidance or directives to follow and to focus on guidance and directives that are unlikely to change during the time the temporary rules are in effect. With input from the Division of Public Health and others within DHHS, we believe that DHSR and the Commission can generate rules which are easier for providers to navigate and comply.

In closing, we appreciate your time and attention in hearing our concerns with the proposed temporary rules. Many of our members look to other states and countries and are seeing what is happening in North Carolina and they continue to be genuinely scared for their residents and staff. As providers, they have worked hard to confront this emergency and will continue to do so.

Sincerely,

Jeff Horton, Executive Director
North Carolina Senior Living Association