



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

REPORT OF PUBLIC HEARING

November 4, 2020

10:00 A.M.

Via Conference Call

Division Staff Present:

Nadine Pfeiffer, Rule-review Manager, DHSR
Diana Barbry, Rule-making Assistant, DHSR
Megan Lamphere, Adult Care Licensure Section
Tichina Hamer, Adult Care Licensure Section
Libby Kinsey, Adult Care Licensure Section

Others Present:

Jeff Horton, North Carolina Senior Living Association
Sandra Korzeniewski, ALG Senior Living
Veronica Taylor, Martin County DSS

Purpose of Hearing

This is the public hearing for the Licensing of Adult Care Homes of Seven or More Beds, and the Licensing of Family Care Homes proposed temporary rule adoptions, rules 10A NCAC 13F .1801 and .1802, and 10A NCAC 13G .1701 and .1702.

Hearing Summary

The public hearing was opened via conference call by Nadine Pfeiffer at 10:00 a.m. Attending via conference call were three members of the public as listed above. A total of one oral comment was recorded for the rules. The oral comment recorded is as follows:

Jeff Horton, North Carolina Senior Living Association – I thank the Agency very much for giving us this opportunity this morning. So basically I'd like to just reiterate what my understanding is why we are here. The agency issued these emergency rules with regard to the coronavirus pandemic that were effective on the 23rd of October, and pursuant to the Rules Review Commission or Administrative Procedures Act under (G.S.)150B, the agency is now moving to make temporary rules and they're using the emergency rules' basis for that.

Our concern with the rules is that first of all, these rules were in response to the coronavirus pandemic. If the agency has to go to temporary rule, I understand why we're doing that. But we expect these rules, even if they go to temporary and make it there, to expire after that. We don't

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see these becoming permanent rules in any way because again, the whole genesis for these rules was to address the coronavirus pandemic and its effect on adult care homes and family care homes. These rules have a significant financial impact, we believe, for facilities in order to develop the policies procedures, implement those, train staff on them, those sorts of things. I think to move this to even a temporary rule, or even before it could ever be considered for permanent rule, I think there has to be a lot of discussion and due diligence on the part of the Agency to see the fiscal impact and whether facilities can even comply with these rules. So that's just my general comment.

Specific comment about the rules really goes to 13F and 13G .1801 which is the infection prevention and control program, particularly the rule under sub cap B (Paragraph (b)) under (Rule) .1801 that states, "the facility shall ensure implementation of the facility's IPCP, related policies and procedures, and guidance or directives issued by the CDC, local health department, and/or the North Carolina Department of Health and Human Services." This right here is that it's so we've got three different agencies, the CDC, the local health department, and North Carolina DHHS that providers have to keep track of everything they're doing with regards to anything that they issue, (such as) directives, policies, guidance.

This is pretty much a yeoman's job for any health care facility even a hospital. To ask adult care homes to do this and to stay on top of this all the time, we believe is, you are just basically setting them up for failure. It is a pretty impossible task. Also what we found is sometimes these directives are guidance issued by the CDC, the local health department and the North Carolina Department of Health and Human Services that actually sometimes conflict with each other. When that happens what is a provider to do?

The other thing that we think would probably make more sense is for the Agency to specifically state which directives issued by CDC and maybe NC DHHS that they are supposed to comply with. Also, the Agency should do due diligence and see if there's any conflict between those different agencies before putting that in some kind of rule.

Regarding the local health department, from what we hear from our members, it depends on which county you're in, depending on what kind of instructions or guidance you get, or directives you get. It's all over the map. We hear that from providers that have facilities in multiple counties, one county will give you directives this way, another county will give directives another way in terms of testing, how to respond to the pandemic, all types of things.

So I think it's going to be very confusing for providers if they're supposed to stay on top of the guidance and directives issued by these three government agencies to first of all, decide what's coming out, second of all reconcile which ones conflict with the other ones and decide which one to go with, and then also put them on their policies procedures, and then training staff on all that. It's just really an impossible task.

Our request would be that if the Agency wants to go down this road, they should explicitly state which guidance or directives by each of these bodies that they're expecting providers to comply with and make certain before putting something like that in the rule that there are no conflicts between the guidance and directives of those different governmental agencies.

Adjournment

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

Respectfully Submitted,

A handwritten signature in cursive script, reading "Nadine Pfeiffer".

Nadine Pfeiffer, Rule-review Manager
November 4, 2020

Attachment – Attendance sheet

Public Hearing Teleconference Attendance

Adult Care Home and Family Care Home Temporary Rules

10A NCAC 13F .1801 & .1802; 10A NCAC 13G .1701 & .1702

November 4, 2020 10:00 a.m.

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