STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

May 1, 2020

Mr. Mike Olender
State Director, AARP North Carolina
5511 Capital Center Drive, Suite #400
Raleigh, NC 27606

Dear Mr. Olender:

Thank you for reaching out and for your efforts to protect the health and wellbeing of North Carolinians. Governor Cooper asked that I respond on his behalf. We share your desire to protect our most vulnerable citizens, particularly those in long-term care settings. We appreciate you sharing your concerns and ideas related to virtual visitation, transfer and discharge of residents, data transparency, PPE, staffing, and testing needs in long-term care settings.

Virtual Visitation
Regarding virtual visitation, DHHS supports offering alternative means of communication for people who would otherwise visit, such as virtual communications (phone, video-communication such as FaceTime or Skype, texting, etc.) and included this recommendation and strategies in our Recommendations on Visitation in Long Term Care Facilities to Reduce the Risk of Transmission of COVID-19. In addition, the Division of Aging and Adult Services (DAAS), in partnership with the North Carolina Assistive Technology Program (NCATP) and other key Aging and Disability Resource Center stakeholders, has applied for a $1.6 million grant from Administration of Community Living (ACL) to institute a system of virtual services for older adults, caregivers, persons with disabilities, and professionals to bring about relief, support, and increased capacity throughout the COVID 19 pandemic. One area of focus includes mitigation of social isolation by training long-term care staff on high- and low-tech devices. In addition, a Social Isolation Workgroup has been established, including multiple partners both internal and external to state government. The group continues to work on communication needs and isolation prevention.

CMS has also modified its process for approving applications submitted by CMS-certified nursing homes for civil monetary penalty (CMP) monies to be used for communicative technology, such as tablets and accessories. Federal regulation specifies the activities and plans for which CMP monies may be used and there use must be approved in advance by CMS. See, 42 CFR 488.433(b). CMS has authorized states to approve applications for CMP monies to be used for communicative technology devices. Devices must be shared among residents with a ratio of one device to 7-10 residents, and up to $3,000 per facility. Applications that exceed these parameters must be submitted to and approved by CMS. We will encourage CMS-certified nursing homes to submit these applications.

Finally, individuals will continue to have access to the Long-Term Care Ombudsman Program, although on a restricted basis as determined by CMS. Ombudsmen remain accessible via phone or video format, unless there are end of life situations in which they will be allowed onsite in certain situations. Should a complaint investigation warrant escalation, an appropriate referral will be made to the appropriate Adult Protective Services representative to ensure the safety of our seniors.

Transparency of Information on COVID-19 Cases
As announced this past week, DHHS has started to provide information on our website on COVID-19 cases associated with outbreaks in congregate living settings, which includes the names of facilities where there are positive cases, as well as, the number of positive COVID-19 cases at the facility. As this pandemic continues to evolve, we continually reassess the appropriateness of data reporting to balance transparency, public health, and individual privacy.

Elder Abuse
We agree that Adult Protective Services (APS) is an essential service responsible for assuring the safety of vulnerable adults who are suspected to have been or who have been maltreated. Face-to-face contact between APS workers and vulnerable adults has long been a cornerstone in assuring safety. The COVID-19 virus represents an unprecedented challenge. Because of the nature of the virus, face-to-face contacts required in APS policy carry a risk of transmission to staff, vulnerable adults, and other family members of the vulnerable adult. The risk to the adult of not having a face-to-face visit must be weighed against the risk of transmission when deciding whether an otherwise required face-to-face visit should take place and how it should be modified to reduce overall risk. DHHS issued this guidance to county DSS agencies on 4/2/2020 and continues to encourage virtual visitation for follow-up visits.

Transfer or discharge of residents
We share your concern about nursing homes transferring or discharging residents from their home. With regard to accepting residents returning from a hospitalization, nursing homes must comply with NCGS §131E-130. In addition, almost 98% of the nursing homes licensed in North Carolina are CMS-certified and must also comply with the requirements in 42 CFR 483.15 to the extent these regulations are not waived by CMS in order to allow facilities to transfer residents within the facility, to another long-term care facility, or to other non-certified locations designated by the State. See https://www.cms.gov/files/document/qso-20-25-nh.pdf.

Facilities are required to assure a safe and orderly transfer/discharge when the resident leaves the skilled-nursing facility for the hospital, or home, or to a lower level of care or another SNF. The federal regulations are very specific. Before a transfer or discharge occurs, the facility is required to notify the resident and the responsible party of these transfer/discharges. The notification must provide the resident and the family with the reason for the transfer/discharge, where the resident is going and also advise of the resident's right to return to the nursing home if the resident continues to require nursing home level of care. The facility is also required to send a copy of the notice to the Office of the State Long-Term Care Ombudsman.

CMS has issued notice that it is in the process of drafting additional regulatory requirements for facilities to notify residents and their representatives regarding conditions inside the facility, such as when new cases of COVID-19 occur. And, as recently announced, DHHS now provides the name of facilities experiencing COVID-19 outbreaks.

The Division of Health Service Regulation works closely with the LTC Ombudsman. We welcome calls from residents and families who may encounter issues with a nursing home transfer, discharge or allowing a resident to return to a facility after a hospitalization. Our nursing home section becomes involved in many of these cases as we work to protect the interests of the resident while also understanding in today's COVID-19 environment, the concerns of the nursing facility for the safety of its other residents. We remain committed to assisting getting residents back into their nursing homes if they require nursing home level of care.

There are similar requirements applicable to adult care homes found at 10A NCAC 13F.0702 and family care homes at 10A NCAC 13G.0705. Just as with nursing homes, we continue to assist the residents and their families whenever there are issues regarding transfers and discharges.

Access to Personal Protective Equipment
Personal protective equipment (PPE) has become one of the largest needs across our state during the COVID-19 pandemic. We are actively working to help get PPE to those who need it. We have put together a process for fulfillment of requests for PPE. In developing this process, the state is trying to make sure that those at highest risk of severe clinical disease and workers delivering emergent life-saving services are receiving the PPE they need. Long-term care settings (along with acute settings) are in tier 1 and high priority. We are receiving requests daily from long-term care facilities and fulfilling these requests, as our supplies allow.

In addition, we are implementing rate changes to support nursing homes and adult care homes in providing the more intensive care needed for residents with COVID-19, including to support staffing and PPE needs. All nursing homes received a 5% increase in their rate effective March 10, which will be effective through the end of the emergency. Additionally, effective April 1, any facility that has an outbreak will receive an additional rate increase of $86.64 per day along with and additional $561.00 per day for each resident who has COVID-19. This increase continues until the resident is no longer positive for the virus. For Adult Care Homes, Medicaid has increased the PCS rate 5% effective March 10th and will continue until the end of the emergency. For facilities that have an outbreak, the PCS rate is increased to $30 per hour for all individuals in the facility, and we are authorizing an additional 100 hours per month for individuals receiving 80 hours and an additional 40 hours for individuals receiving 120 hours per month. This is effective April 1st. These relief measures will address immediate cash flow needs caused by sharply rising costs and the expenses to maintain an elevated level of care over the course of the public health crisis, including screening, enhance cleaning protocols, purchase additional cleaning supplies and protective equipment, while also addressing staffing needs.

Regarding flexibilities to allow nursing trainees to practice, Executive Order 130 delegated authority to professional boards including the Board of Nursing to waive or modify enforcement of any legal or regulatory rules that prevent or impair allowing students at an appropriately advanced state of professional study to provide care. The actions taken by Board of Nursing based on these delegated authorities are available on their website.

Testing
Regarding testing of residents and staff at long-term care, our guidance to local health departments that investigate outbreaks in long-term care settings is to test all residents and staff once cases are identified, regardless of symptoms, though they have flexibility to determine testing needs dependent on the scenario. Testing capacity has greatly increased in NC as new commercial labs start to increase their capacity as well, and we agree testing is a key strategy.

We share your desire to protect our highest risk citizens and appreciate the continued collaboration and support. Thank you for your thoughtful input and for all you are doing to ensure the health and wellbeing of North Carolinians.

Sincerely,

Mandy K Cohen

Mandy K. Cohen, MD, MPH
Secretary
NC Department of Health and Human Services