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April 16, 2019

Via Email Only

Members of the Rules Review Commission
Ms. Amanda Reeder, Commission Counsel

Re: Comments to Comments to 10A NCAC 14J – Jails and Local Confinement Facilities
Rules

Dear Commissioners and Ms. Reeder:

Candace Hoffman and Bethany Burgon, of the North Carolina Attorney General's Office, are providing the following response to comments on behalf of the North Carolina Department of Health and Human Services ("the Agency"). The following comments are written in response to the April 11, 2019 written comments of Disability Rights North Carolina ("DRNC") which were submitted in response to the comment and objection letter of the North Carolina Sheriff's Association ("NCSA") dated March 19, 2019. The Agency appreciates the support of DRNC to the proposed rules for Jails and Local Confinement Facilities, 10A NCAC 14J. The Agency agrees with the position that the rules are clear, unambiguous and within the Agency's authority. The Agency provides the following specific responses to the comments.

10A NCAC 14J .0101 Definitions

The proposed rule 10A NCAC 14J .0101 does not exceed the authority of the Agency. Pursuant to N.C.G.S. § 153A-221, the Agency has the authority to develop minimum standards to provide secure custody of inmates and to protect the health and welfare of the inmates. This authority includes creating minimum standards for the supervision of inmates. See N.C.G.S. § 153A-221(a)(5).

The proposed rule language requires an in-person check of inmates in the housing unit not remote observation from a control room so the changes requested by the NCSA would make the rule less stringent and inmates less safe. Inmate deaths in the State have been steadily rising over the years with 20 deaths and 36 deaths occurring in 2016 and 2017, respectively. 42 inmate deaths occurred in 2018. In-person checks of inmates is considered a best practice for helping to reduce inmate deaths in jails¹.

¹ US Department of Justice, National Institute of Corrections, "Suicide in Corrections" Retrieved from <https://nicic.gov/suicide-in-corrections>.

The proposed rule language is also supported by a national standard for correctional facilities² which requires an in-person check of inmates on an irregular basis twice per hour for supervision rounds with no more than 40 minutes between rounds. For special watch rounds, the national standard requires an in-person check of inmates on an irregular basis four times per hour with no more than 20 minutes between rounds.

The NCSA has requested that officers should have the option of either entering and walking through a cellblock and doing an in-person check of each inmate or observing the inmate from a control room that overlooks the cellblock. This change was not made. Observing an inmate from a control room will not provide the level of supervision needed to keep an inmate safe and secure within a housing unit as an officer walking through a housing unit. The proposed rule language is supported by the American Correctional Association in Standard 4-ALDF-2A-05, which requires an in-person check of inmates on an irregular basis twice per hour. The Agency used its authority to create minimum standards for the supervision of inmates that is in line with the national standard.

10A NCAC 14J .0203 Contents of Operations Manual

The proposed language of 10A NCAC 14J .0203 is clear and unambiguous. The Agency proposed to add “suicide prevention program” to in this rule to be consistent with the language used in the national jail standards. The Agency included language in the rule that describes the main components of a “suicide prevention program.” The two national jails standards are from the American Correctional Association and the National Commission on Correctional Health Care. The Agency used the wording “suicide prevention program” to be consistent with the wording in the two standards as shown below:

Core Jail Standards from the American Correctional Association

Suicide Prevention and Intervention

1-CORE-4C-13 (Mandatory) (Ref. 4-ALDF-4C-32)

A suicide-prevention program is approved by the health authority and reviewed by the facility or program administrator. The program must include specific procedures for handling intake, screening, identifying, and supervising the suicide-prone inmate. All staff responsible for supervising suicide-prone inmates are trained annually on program expectations.

Protocols: Written policy and procedures. Training curriculum and lesson plans. Suicide watch logs or forms.

Process Indicators: Health records. Documentation of staff training. Documentation of suicide watches and critical incident debriefings.

Observations. Interviews.

National Commission on Correctional Health Care

J-G-05 Suicide Prevention Program (essential)

The facility identifies suicidal inmates and intervenes appropriately.

Compliance Indicators.

Key components of a suicide prevention program include the following:

- training
- identification

² American Correctional Association, an organization that accredits jails in the country as well as other types of correctional facilities, publishes Standard 4-ALDF-2A-05 for supervision rounds and Standard 4-ALDF-2A-52 for special watch rounds.

- referral
- evaluation
- treatment
- housing and monitoring
- communication
- intervention
- notification
- review and debriefing.

The NCSA has requested that the Agency use the wording “suicide prevention plan” alleging that “suicide prevention program” is ambiguous and unclear. The Agency believes “suicide prevention program” is clear and unambiguous because it is the identical wording used in the national standards.

10A NCAC 14J .0301 Classification System and Total Design Capacity

The proposed rule 10A NCAC 14J .0301 does not exceed the authority of the Agency. Pursuant to N.C.G.S. § 153A-221, the Agency has the authority to develop minimum standards to provide secure custody of inmates and to protect the health and welfare of the inmates. This authority includes creating minimum standards for secure and safe physical facilities and adequacy of space per inmate. *See* N.C.G.S. § 153A-221(a)(1) & (2).

The NCSA has requested that a jail be allowed to exceed its total design capacity “by more than 10% for a period of 30 consecutive days.” This change could not be made because to do so would mean this rule would conflict with many of the physical plant rules of 10A NCAC 14J Sections .1200 and .1500. These physical plant rules require: a bunk and cell for every inmate; seating and table space for each inmate in the dayroom; a certain size dayroom for the number of inmates using the dayroom; access to toilet and sinks; a certain number of showers based on the inmates in the housing unit. If jails are allowed to exceed their total design capacity even by 10%, then some inmates will not have a cell and bunk and will be sleeping on mattresses on floors in the dayroom, some inmate may not have a seat or table space in the dayroom, some inmates may have limited access to toilets and sinks if the toilets and sinks are only accessible from cells instead of the dayroom, and some inmates may not have access to a shower because the number of showers are inadequate for the number of inmates located in the housing unit.

10A NCAC 14J .0403 Fire Plan, Fire Evacuation Training, and Disaster Plan

The proposed language of 10A NCAC 14J .0403 is clear and unambiguous. The NCSA has requested that the requirement for “fire evacuation training” to be conducted on a “quarterly basis” be removed from this rule. The North Carolina State Fire Prevention Code (NCSFPC) governs how frequent fire evacuation drills should be conducted in a jail, not this rule. Removing If the requirements for quarterly fire evacuation training were removed from this rule, the jails would still have to conduct fire evacuation training on a quarterly basis for all shifts. For a jail, Section 405 of the NCSFPC states that the “fire evacuation training” shall be conducted on a quarterly basis. In order to make it clear that the NCSFPC governs this requirement, the Construction Section cited Section 405 of the NCSFPC in the proposed rule.

The Agency did not add “Inactive employees, such as those on medical leave, shall not be required to attend the training” as requested by the NCSA. Whether inactive employees should

participate in “fire evacuation training” should be discussed with the local fire marshal. Section 405 of the NCSFC requires employees on all shifts of the jail to participate in the quarterly fire drills. Section 405 does not specify whether inactive employees are not required to participate in the drills.

10A NCAC 14J .0601 Supervision Rounds

10A NCAC 14J .0601 does not exceed the authority of the Agency for the reasons stated above under 10A NCAC 14J .0101 Definitions.

10A NCAC 14J .1001 Medical Plans

The proposed rule 10A NCAC 14J .1001 does not exceed the authority of the Agency. Pursuant to N.C.G.S. § 153A-221, the Agency has the authority to develop minimum standards to provide secure custody of inmates and to protect the health and welfare of the inmates. This authority includes creating minimum standards for “medical care of inmates, including mental health.” *See* N.C.G.S. § 153A-221(a)(7).

Pursuant to N.C.G.S. § 153A-225, the local health director must approve the medical plan after consultation with the local management entity for mental health, development and intellectual disabilities, and substance use disorders. Therefore, the existing medical plans should include policies for the care of inmates for mental health conditions, development and intellectual disabilities, and substance use disorders.

All 113 jails in the state were surveyed and asked whether their medical plans included policies for the routine medical care of inmates with mental health conditions, developmental and intellectual disabilities, and substance use disorders. Of the 113 jails surveyed, there were only two jails without a medical plan policy for the routine care of inmates with a developmental and intellectual disabilities.

In .1001(b)(3), the requirement for the handling of routine care for an inmate's needs related to mental health, a developmental and intellectual disability and a substance use disorder are supported by the Nonemergency Health Care Requests and Services Jail Standard J-E-07 and the Mental Health Screening and Evaluation Jail Standard J-E-05 of the National Commission on Correctional Health Care.

10A NCAC 14J .1002 Screening of Inmates

The proposed language of 10A NCAC 14J .1002 is clear and unambiguous. The proposed rule provides a list of five required screening areas which makes the rule less ambiguous than the previous wording. The local health director would be responsible for creating the screening forms because a policy for screening forms is required by of the Medical Plan in 10A NCAC 14J .1001.

10A NCAC 14J .2110 Other Areas

The proposed rule 10A NCAC 14J .2110 does not exceed the authority of the Agency. Pursuant to N.C.G.S. § 153A-221, the Agency has the authority to develop minimum standards to provide secure custody of inmates and to protect the health and welfare of the inmates. This authority includes creating minimum standards for jail design and any other provision for the welfare of the inmates. *See* N.C.G.S. § 153A-221(a)(2) & (10).

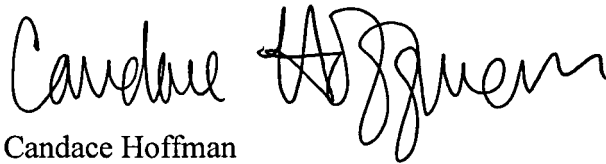
Outdoor and indoor inmate exercise areas are required by a national standard for correctional facilities³. Outdoor exercise is seen as extremely beneficial to an inmate's emotional and physical well-being because the inmate is exposed to fresh air and sunlight. As per the fiscal note, there was only a projected cost impact for the construction of outdoor exercise areas in future jails. Currently, jails are constructing indoor exercise areas that meet the requirements of the proposed rule. The estimated additional cost impact for complying with the proposed square footage requirements for outdoor exercise areas was projected to be approximately \$310,508 and \$319,240 in 2022 and 2023, respectively.

The Agency requests that you approve the proposed 10A NCAC 14J – Jails and Local Confinement Facilities Rules. We will be attending the April 18, 2019 RRC Meeting, along with DHHS staff, to answer any questions. Do not hesitate to contact us if you have questions before the RRC Meeting.

Thank you,



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³ American Correctional Association Standard 4-ALDF-5C-04