

MEMORANDUM

TO: GAHSA Board of Directors
GAHSA Public Policy Committee
GAHSA Adult Day Center Providers (GADCA)

FROM: Walter Coffey, Tom Bauer, Georgia Gunter

DATE: May 5, 2008

SUBJECT: Adult Day Licensure ACTION ALERT

As most of you know the road to implementing licensure of adult day centers has been arduous. After many months GAHSA believed that DHR had finally created a fair compromise, based on appropriate input, to allow for "regulation light" of small social model providers, mostly congregational respite programs. However, in this General Assembly HB 1044 was introduced, originally to allow for "regulation light" for future respite programs, while "grandfathering" (exempting) the current programs. Despite the common sense suggestions of several advocates, including GAHSA, HB 1044 was passed over the objections of several groups. In its final form it exempted ALL respite care services programs from licensure. HB 1044 is expected to be signed soon by Governor Perdue.

Meanwhile, DHR has proposed a new set of rules to implement licensure of adult day centers; these rules incorporate the changes to law made by HB 1044. You will find attached two documents: The DHR Notice of the Proposed Rules and hearing to be held on May 9 and secondly, changes with comments, suggested by GAHSA.

Comments are due by May 17 to the address shown on the notice.

Please look at the attached GAHSA document and make contacts to DHR as well as the DHR Board, especially on the proposed fees, which are much higher than had been anticipated. In reviewing GAHSAs suggested changes to the proposed rules, you will note that suggested new language is underlined in bold and GAHSA comments are in italics.

When you are reviewing the GAHSA comments, it might also be helpful to look at the second page of the DHR notice included below. That page reprints some of the definitions in the proposed rules. Having these in front of you will make reviewing the GAHSA proposal easier.

GAHSA intends to submit these comments and suggestions that include input from our adult day program members.

We strongly suggest that you send a separate letter to DHR from your program (to Marion Cornett listed on the memo below). Ideally the comments will be in your own words, but feel free to also endorse the GAHSA comments, or to highlight any issues of particular concern in the proposed

rules (e.g. fees, the need to clarify that therapists or others may be contracted personnel, any item of particular concern to social programs as opposed to medical models, etc.). GAHSA thinks it makes more sense for our adult day programs to submit written comments rather than to testify at the May 9 hearing (even though we will have a couple of members attend); these hearings are not usually well attended by DHR board members. However, you should also copy your comments to the DHR board members. We have provided you with contact information listed below.

**SUGGESTED CHANGES (WITH COMMENTS) TO PROPOSED
DHR ADULT DAY CENTER RULES (5-5-08)**

1. Application for a License (290-9-11-.05)

Change paragraph (11) dealing with fees, to read as follows:

(11) The following are the licensing fees approved by the Department.

(a) Adult day centers.

- 1. Application fee: ~~\$10~~;
- 2. The initial license fee: ~~\$100~~, or ~~\$225~~ if following a finding of operating without a license.
- 3. Annual renewal fee: ~~\$100~~, or ~~\$225~~ if past due.

(b) Adult day health centers.

- 1. Application fee: ~~\$25~~.
- 2. Initial license fee: ~~\$300~~, or ~~\$400~~ if following a finding of operating without a license.
- 3. Annual renewal fee: ~~\$300~~, or ~~\$400~~ if past due.

(c) Mobile adult day centers.

- 1. Application fee: ~~\$25~~.
- 2. Initial license fee: ~~\$100~~ plus ~~\$25~~ per off-site location, or ~~\$225~~ plus ~~\$35~~ per off-site location if following a finding of operating a license.
- 3. Annual renewal fee: ~~\$100~~ plus ~~\$25~~ per off-site location, or ~~\$225~~ plus ~~\$35~~ per off-site location if past due.

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Comments:

- 1. *The fees in the proposed rules are far in excess of the amount discussed over the last nine months between the Department and the Adult Day Care Task Force. They are far more than mentioned in previous testimony given at public hearings at which testifiers suggested fees in the range of \$100 (social model) to \$300 (medical model).*
- 2. *Many providers of adult day services are small and frequently are also nonprofit organizations; the proposed fees will be quite burdensome.*
- 3. *HB 505, the 2007 legislation (passed and signed) that authorizes DHR to impose fees caused significant discussion in the House Human Relations and Aging committee hearing. At that time representatives of DHR acknowledged \$250 to be in the range of fees to be*

expected. Even at that level, several legislators considered that amount to be more in the nature of a tax, rather than a fee to support services (as provided in HB 505).

4. Other than a \$10 application package fee, there are NO state license fees (or renewal fees) for personal care homes. There are also no such state fees for child care learning centers.

2. Staffing (290-9-11-.13)

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Change to read as follows:

(d) (1) Appropriately qualified staff to perform skilled therapies, e.g. physical therapy, occupational therapy, and speech therapy, as identified in the participant's individual plan of care; and

(2) Appropriately qualified staff to deliver social services.

(e) An adult day center may use contract professionals to provide the services required under paragraph (d) above.

Comment: while there is a reference to "contract professional" in (9)(b)(3) of 290-9-11-.14, there is really no definitive statement in the rules authorizing the use of contracted personnel to provide therapy, social or other services.

3. Personnel (290-9-11-.14)

Change paragraph (3), dealing with training, to read as follows:

(3) Training. The Director shall be responsible for ensuring that any person working in the center as an employee or under contract, receives work-related training acceptable to the Department within the first ninety days of employment. However, for centers providing services prior to the effective date of these rules, the centers shall have until **ninety days following the effective date of these rules**, to have all such staff who were hired prior to the effective date of these rules certified in first aid and cardiopulmonary resuscitation. Such training for employees shall at a minimum include the following:....

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(b) Current certification in first aid and cardiopulmonary resuscitation (CPR) by the Red Cross, American Heart Association, or other acceptable organization or program with the same or substantially the same standards for certification;

Comments:

1. *This seems too short a period of time for the latter situation. Why not make it 90 days for both?*

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2. *The cost of Red Cross or American Heart Association certification is significantly more- sometimes twice- as much as other certifications based on the same standards. As*

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proposed, this requirement only increases costs for compliance for programs many of which are operated by small, nonprofit organizations.

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4. Personnel (290-9-11-.14)

Change paragraph (8), dealing with health requirements to read as follows”

(8) Health Requirements.

(a) All staff and volunteers who provide direct care to participants shall have received a verification from an authorized health care professional within six months prior to employment, provides the following:

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1. Documentation that the employee/volunteer is free of signs and symptoms of communicable diseases; and
2. Evidence that all staff/volunteers are free of active tuberculosis based upon the results of a negative tuberculin skin test or chest x-ray.

Comment: It is an unnecessary expense to require a complete physical to certify an absence of tuberculosis or other communicable disease.

5. Governing Body (290-9-11-.07)

Add a paragraph (6) to read as follows:

(6) The Department is authorized to identify and request from the governing body of a program holding itself out to be “respite care services program” as defined in paragraph (ff) of Section 290-9-11-.04, a statement or an affidavit affirming that the program:

- (a) Is operated in a facility that is in compliance with all applicable fire safety regulations, all building codes and other applicable codes;**
- (b) Does not serve persons with Alzheimer’s disease or other dementia, unless they are in the early stages of such illness and are not in danger of wandering off the premises of the respite care services program;**
- (c) Does not provide services to assist aging adults with the components of “activities of daily living” that are not contained in paragraph (ff) of Section 290-9-11-.04; and**
- (d) Provides services only to aging adults who can function in a group setting and who can feed and toilet themselves with or without the assistance of a personal aide accompanying them, and meets the criteria for respite care services programs contained in paragraph (ff) of Section 290-9-11-.04.**

Comment: The Georgia Association of Homes and Services for the Aging continues to be concerned about the health and safety of participants in smaller adult day programs. GASHA does not feel that the criteria for respite care services programs, while directly reflective of earlier versions of these rules and HB 1044, bear any reasonable relationship to factors which ensure that participants are safe and well served. For example, the fact that a program is operated by a

nonprofit organization; is staffed primarily by volunteers; or provides no more than 25 hours of service per week hardly assures the safety of participants. GAHSA feels these criteria were appropriate when proposed for "limited service adult day centers" and for the level of regulation proposed in earlier versions of these rules. GAHSA feels it is inherently necessary for the Department to require the statement or affidavit suggested above and urges the Department to exercise its general powers to do so.

6. Inspections (290-9-11-.26)

(1) (a) The Department is authorized and empowered to conduct complaint investigations and periodic on-site inspections of any center required by these rules to be licensed when determined necessary.

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(b) The Department is authorized and empowered to conduct such inspections of a program which represents itself as a respite care services program when a complaint has been made to the Department that such a program is providing services to assist aging adults with the components of "activities of daily living" that are not contained in paragraph (ff) of Section 290-9-11-.04 or that such a program does not otherwise conform to the definition of such a respite care services program as contained in paragraph (ff) of Section 290-9-11-.04. The Department is empowered to conduct an inspection only when it has reasonable grounds to believe the veracity of a complaint or when it believes a program representing itself as a respite care services program is operating in such a manner as to be detrimental to the health, safety, and welfare of the participants in the respite care services program.

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Comment: The suggestion made here is a corollary to the one made in # 5 above and is a logical way to implement such a provision.

BOARD OF HUMAN RESOURCES

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B. J. Walker, Commissioner
Brenda King Woodard, Chief Legal Officer

Legal Services Office • Two Peachtree Street, NW • Suite 29.210 • Atlanta, Georgia 30303-3142
Phone: 404-656-4421 • Fax: 404-657-1123

Docket No. ORS-257

Notice Date: April 17, 2008

Rules and Regulations for Adult Day Centers
RULES CHAPTER 290-9-11

Dear Sir or Madam:

In response to comments received from the public at several previous hearings, the Board of Human Resources has authorized the re-opening of the public hearing on proposed new Rules Chapter 290-9-11 entitled "Rules and Regulations for Adult Day Centers." A copy of the proposed new Chapter, *as now revised*, is attached. A synopsis of the proposed changes from the previous draft of this Chapter is also enclosed. An electronic version of the Rules text may be found on the agency's web site at www.ors.dhr.georgia.gov.

Questions concerning these changes should be directed to Leslee Pool, Deputy Director, Office of Regulatory Services, at telephone number (404) 657-5704.

Written comments and other written materials regarding the rules should be sent to Marion W. Cornett, Jr., Administrative Hearing Officer, at the above mailing address or by e-mail to mwcornett@dhr.state.ga.us.

The Department solicits your comments, data or argument for or against adoption. Your comments may be made in writing by mail or other delivery to the undersigned Hearing Officer within thirty (30) days of the above notice date, or orally at a hearing before a Hearing Officer at 10:00 A.M. on Friday, May 9, 2008, in the DHR Board Room, 2 Peachtree Street, NW, Suite 29-250 Atlanta, Georgia. **Please be assured that comments made by either method will be given equal consideration. Comments submitted in response to previous hearing notices, including oral comments at public hearings, will automatically be included in the hearing record and need not be re-submitted.**

All comments received will be summarized in a written report to the Board which will consider final adoption of the proposed Rules Chapter, as revised, at its regular meeting starting at 1:00 p.m. on Wednesday, May 21, 2008, in the Board Room, Suite 29-250, 2 Peachtree Street, NW, Atlanta, Georgia.

Marion W. Cornett, Jr.
Administrative Hearing Officer
Tel. (404) 656-4421 (Procedural questions only)

NOTE: For points of reference the definition in the proposed rules of ADL and respite programs are:

“Activities of daily living” means bathing, shaving, brushing teeth, combing hair, toileting, dressing, eating, grooming, taking medications, and transfers and/or ambulation.

“Respite care services program” means a program for aging adults who can function in a group setting and who can feed and toilet themselves with or without the assistance of a personal aide accompanying them and which:

- 1. Is operated by a nonprofit organization;*
- 2. Provides no more than 25 hours of services per week;*
- 3. Is managed by a director who has completed an adult day care services training and orientation program approved by the Department;*
- 4. Is staffed primarily by volunteers; and*
- 5. Has as its sole purpose to provide primary caregivers of aging adults with relief from normal caregiving duties and responsibilities.*