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LME-MCO Communication Bulletin #J244

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To: LME-MCOs

From: Mabel McGlothlen, Team Leader for System Performance and Project Management,
DMH/DD/SAS and Deb Goda, Behavioral Health Unit Manager, Community Based Services,
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Subject: Placing Children or Other Clients in Unlicensed AFLs

This bulletin reiterates statutes and rules regarding the operation of and the provision of services within a licensable facility. It has come to the attention of Department of Health and Human Services (DHHS) staff that LME-MCOs may be placing children and other clients in unlicensed alternative family living homes (AFLs).

This practice violates the laws and rules regarding licensure of facilities and must stop.

Providers allege that LME-MCOs approve of this practice as long as the facility is actively seeking licensure and the facility does not bill the LME-MCO for services.

- This is not correct; and, there is no apparent authority or provision of law to support this practice.
- A provider is prohibited from providing services until they are duly licensed by the DHHS Division of Health Service Regulation regardless of whether the provider is billing for the service.

The following is a summary of the main statutes and rules that require an AFL to be licensed if it is providing services to one or more minors or to two or more adults.

1. North Carolina General Statute § 122C-3 (14) defines a "licensable facility" as "a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same

individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities.”

2. NCGS § 122C-21 states the purpose of our licensure laws. The purpose of the licensure laws and rules is to provide for licensure of facilities for the mentally ill, developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing the provision of services to individuals who receive services from licensable facilities and the construction, maintenance, and operation of these licensable facilities that, based on existing knowledge, will ensure safe and adequate treatment of these individuals.
3. NCGS § 122C-2(a) states “No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.”
4. 10A NCAC 27G.5601(a) defines “Supervised living” as “a 24-hour facility which provides residential services to individuals in a home environment where the primary purposes of those services is the care, habilitation, or rehabilitation of individuals who have a mental illness, a developmental disability, or disabilities, or a substance abuse disorder, and who require supervision when in the residence.”
5. 10A NCAC 27G.5601 (b) requires that a supervised living facility “be licensed if the facility serves either: (1) one or more minor clients; or (2) two or more adult clients.”
6. NCGS 122C-28 states: “Operating a licensable facility without a license is a Class 3 misdemeanor and is punishable only by a fine not to exceed fifty dollars (\$50.00), for the first offense and a fine, not to exceed five hundred dollars (\$500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense.”

In summary, an AFL must be licensed if it serves one or more minors or two or more adults. Given these statutes and rules, LME-MCOs must immediately cease approving the placement of clients in unlicensed facilities if they are engaging in such a practice so as to protect client safety and ensure adequate treatment.

Encouraging AFL providers to accept clients and provide services prior to licensure is unacceptable and does not serve the best interests of this population. DHHS will continue to identify unlicensed facilities, including unlicensed AFLs, and utilize its legal options to prevent the continued operation of such facilities.

The Division of Health Service Regulation has provided some of the content in this bulletin.

If you have any questions, please contact Eric Harbour at eric.harbour@dhhs.nc.gov or 919-715-2363.

Previous bulletins can be accessed at:

<http://www.ncdhhs.gov/divisions/mhddsas/joint-communication-bulletins>

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