

Impact Analysis: Healthcare Personnel Registry Nurse Aide Reciprocity Permanent Rule Amendment

Agency:	N.C. Medical Care Commission	
Rule Citation(s):	10A NCAC 130 .0301 (*See proposed rule in Appendix)	
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Rulemaking Authority:	G.S. 131E-255	
Impact Summary:	State Government:	Yes
	Local Government:	No
	Private Entities:	Yes
	Substantial Impact:	No

Introduction

In April 2020, the North Carolina Medical Care Commission, in accordance with General Statute 150B-21.1A(b), adopted an emergency rule amendment and simultaneously proposed a temporary rule amendment for 10A NCAC 130 .0301 Nurse Aide I Training and Competency Evaluation due to the serious and unforeseen threat to the public health and safety by the COVID-19 virus. The emergency amendment, that became effective April 26, 2020, allowed reciprocity for out-of-state nurse aides who are active and in good standing on another State's nurse aide registry, waiving the state's competency examination. The temporary rule amendment that continued allowing reciprocity became effective June 26, 2020.

This rule proposes to make permanent the amendments to the rule allowing reciprocity for out-of-state nurse aides who are active and in good standing on another State's nurse aide registry. Thus, reciprocity will directly benefit the citizens of North Carolina during the COVID-19 crisis and in the future as the population continues to grow and as more citizens are over the age of 65 and receive care in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs).

Background and Purpose

Nurse aides augment the care nurses provide by performing routine duties of caring for patients or residents under the direction of a Registered Nurse or Licensed Practical Nurse. Federal law requires states to confirm and register nurse aides who provide care in nursing homes. This confirmation and registration is obtained through a state-approved nurse aide training program and a state-approved competency examination.

North Carolina's population is growing and aging. In 2019, North Carolina had an estimated population of approximately 10.5 million people. In addition, approximately 16.5.% of individuals were aged 65 or

over. By 2038, North Carolina is projected to have a population of 12.9 million people. Between years 2019 and 2038, the population aged 65 and over is projected to grow at a rate of more than 2.5 times faster than the total population. By 2038, projections indicate that 21% of the population will be aged 65 and over.¹

Every two years, in conjunction with the Bureau of Labor Statistics (BLS), the North Carolina Department of Commerce publishes a 10-year industry and occupation employment projections for statewide and sub-state areas. It is predicted that by 2026, the Healthcare Support Occupations group will be one of the fastest growing occupational groups in North Carolina with an annualized growth rate of 1.9%. The Healthcare Support Occupations group includes healthcare aides, assistants, etc. Table 1 depicts the employment estimate in 2017 and 2026 for the Health Care Support Occupations group.²

Table 1

Occupational Group	Employment Estimate 2017	Employment Estimate 2026	Net Change	Percent Change	Annualized Growth Rate	2017 Annual Median Wage
Healthcare Support Occupations	154,974	183,303	29,329	18.9%	1.9%	\$25,420

Mercer, a global health care staffing consultancy, conducted a labor market analysis and projected that the US will likely face a shortage of 95,000 nursing assistants in 2020.³ Table 2 depicts the North Carolina Department of Commerce’s projected average annual openings for the Healthcare Support Occupations group from years 2017 to 2026.²

Table 2

Average Annual Openings	Number of Positions
Due to Occupational Separations	18,883
Due to Growth	3,259

On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No.116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention and the United States Department of Health and Human Services declared COVID-19 a public health emergency. In conjunction with government guidance, on March 16, 2020, the state-approved nurse aide I competency exam vendor, NCS Pearson, Inc. d/b/a Pearson VUE, suspended all nurse aide competency examinations in North Carolina until conditions were deemed safe to re-open.

In response to the COVID-19 crisis, the Center for Medicaid and Medicare Services (CMS) waived 42 CFR §483.35(d), except for 42 CFR §483.35(d)(1)(i)), so that they do not present barriers for skilled nursing facilities (SNFs) or nursing facilities (NFs) to provide adequate levels of staffing for the duration of the COVID-19 pandemic. Included in the waiver was 42 CFR §483.35(d)(1)(ii)(A) which references the requirement that a facility must not use an individual working in the facility as a nurse aide for more

¹ OSBM population estimates and projections: <https://www.osbm.nc.gov/demog/county-projections>

² NC Department of Commerce – Labor & Economic Analysis Division: https://files.nc.gov/nccommerce/documents/LEAD/Projections/2026_NC_Employment_Projections_Summary.pdf

³ CNN Business: <https://money.cnn.com/2018/05/04/news/economy/health-care-workers-shortage/index.html>

than 4 months, on a full-time basis, unless the individual has completed a training and competency evaluation program approved by the State.

Prior to COVID-19, states and health care providers were reporting a shortage of nurse aides. In a report to Congress, CMS determined that 2.4 nurse aide staffing hours per resident per day provided the most impact on short-stay quality outcomes related to hospital transfers for potentially avoidable causes (e.g., urinary tract infections, sepsis, electrolyte imbalance). In addition, CMS determined that 2.8 nurse aide staffing hours per resident per day provided the most impact on long-stay quality outcomes (e.g., functional improvement, incidence of pressure sores, incidence of skin trauma, resisting care improvement and weight loss).⁴ Overall, an overwhelming majority of North Carolina’s skilled nursing facilities do not meet the recommended nurse aide staffing hours per resident per day threshold (Table 3 and Table 4).⁵ The average nurse aide staffing hours per resident per day in North Carolina is 2.17.⁵

Table 3

State	The Percentage of Skilled Nursing Facilities Below the 2.4 Nurse Aide Staffing Hours Per Resident Per Day Threshold	N Value
US	62%	9,213
NC	78%	319
GA	87%	305
SC	66%	117
TN	87%	270
VA	82%	230

Table 4

State	The Percentage of Skilled Nursing Facilities Below the 2.8 Nurse Aide Staffing Hours Per Resident Per Day Threshold	N Value
US	84%	9,213
NC	90%	319
GA	96%	305
SC	83%	117
TN	96%	270
VA	90%	230

Description of Proposed Rule

By implementing reciprocity, North Carolina will recognize the validity of other State nurse aide registries. An out-of-state nurse aide, provided they meet the criteria listed below, will no longer be required to complete the North Carolina nurse aide I competency examination in order to be listed on the North Carolina Nurse Aide I Registry. The current competency examination includes both a written (or oral) examination and a skills evaluation. An individual must pass both components of the examination to be listed on the North Carolina Nurse Aide I Registry.

⁴ Congressional Report:

https://www.justice.gov/sites/default/files/elderjustice/legacy/2015/07/12/Appropriateness_of_Minimum_Nurse_Staffing_Ratios_in_Nursing_Homes.pdf

⁵ Centers for Medicare and Medicaid Services: Nursing Home Compare data analyzed on May 1, 2020

The following reciprocity criteria must be met for an out-of-state nurse aide to be listed on the North Carolina Nurse Aide I Registry.

- The applicant must submit a complete reciprocity application.
- The applicant must be listed on another State’s registry of nurse aides as active and in good standing.
- The applicant has no pending or substantiated findings of abuse, neglect, exploitation, or misappropriation of resident or patient property recorded on other State registries of nurse aides.
- if the applicant has been employed as a nurse aide for monetary compensation consisting of at least a total of eight hours of time worked performing nursing or nursing-related tasks delegated and supervised by a Registered Nurse, then the applicant shall provide the employer name, employer address, and dates of employment for the previous 24 consecutive months.
- The name listed on an applicant’s Social Security card and unexpired government-issued identification containing a photograph and signature submitted with the application must match the name listed on another State’s registry of nurse aides or that the applicant has submitted additional documentation verifying any name changes.
- The applicant completed a State-approved nurse aide training and competency evaluation program that meets the requirements of 42 CFR 483.152 or a State-approved competency evaluation program that meets the requirements of 42 CFR 483.154.

Impact Analysis

By allowing reciprocity, the agency expects to reduce costs and turnaround times for out-of-state nurse aides seeking work in North Carolina. In addition, reciprocity could increase the number of out-of-state applicants seeking approval to work in North Carolina compared to the past three years, but the extent of this effect is uncertain. Compared to current rules, reciprocity may help to address nurse aide staffing needs but waiving the competency exam also increases the potential risk to residents and patients.

Out-of-State Nurse Aides

Under current rules, out-of-state nurse aides must pass the North Carolina nurse aide I competency examination. The fee to complete both the written (or oral) examination and skills evaluation is \$120. An individual continues to pay an examination fee each time they do not pass a component of the exam. An out-of-state nurse aide has three opportunities to complete and pass the examination before they are required to retake nurse aide training. Table 5 depicts the fees associated with the North Carolina nurse aide I competency examination.⁶

Table 5*

Examination Type	Fee
Written Examination and Skills Evaluation	\$120
Oral (English or Spanish) Examination & Skills Evaluation	\$120
Written Examination Only (re-test)	\$30
Oral (English or Spanish) Examination Only (re-test)	\$30
Skills Evaluation Only (re-test)	\$90

* The first time an individual takes the competency examination, they must complete both the written (or oral) examination and the skills evaluation.

⁶ Fees are associated with NCS Pearson, Inc. d/b/a Pearson VUE. Pearson VUE is the state-approved nurse aide I competency evaluation program vendor

Reciprocity waives the competency examination requirement to be listed on the North Carolina Nurse Aide I Registry and therefore the associated fees that must be incurred by an out-of-state nurse aide. Table 6 indicates that in each of the last three years, at minimum, approximately 700 out-of-state nurse aides were approved by the agency to take the North Carolina nurse aide I competency examination in order to be listed on the NC Nurse Aide I Registry. If the trend continues, the total savings to out-of-state nurse aides is a minimum of \$84,000.

Table 6*

Calendar Year	The Total Number of Training Waivers Approved by the Agency	The Number of Training Waivers Approved from Out-of-State Nurse Aides to Take the Competency Examination in North Carolina	The Percentage of Total Training Waivers Approved from Out-of-State Nurse Aides
2017	1520	900	59%
2018	1365	800	59%
2019	1300	700	54%

*Approximations

Reciprocity expedites the timeframe by at least 12 days for an out-of-state nurse aide to be listed on the NC Nurse Aide I Registry and thus supports healthcare facilities in the ability to fill nurse aide vacancies sooner. Prior to reciprocity, out-of-state nurse aides were required to apply for a training waiver in order to not have to complete the state-approved nurse aide training in North Carolina. On average, each training waiver application is reviewed by the agency within two or three business days. Once the waiver application is approved, then the agency notifies the state-approved competency examination vendor so that the out-of-state nurse aide can register and select a date to take the competency examination. Out-of-state nurse aides can register within approximately two days of agency approval but must wait an additional 12 days to take the exam so that the state-approved competency examination vendor can ensure adequate examination personnel and testing materials are at each test site. In some instances, an out-of-state nurse aide may have to wait beyond the 12 days depending on the availability of test dates.

Healthcare Facilities and Clients

According to a report published in 2002 by the Office of Inspector General, nurse aides care for between 10-15 nursing home residents per shift and find it difficult to deliver quality care to all residents entrusted to them, especially when positions remain unfilled.⁷ Therefore, reciprocity does address the nurse aide staffing shortage in North Carolina. However, reciprocity may increase the risk to clients and place an additional burden on healthcare facilities for on-the-job training since approximately 66% of out-of-state nurse aides do not pass the nurse aide I competency examination the first time. Assuming applicant trends continue, over 450 out of state nurse aide applicants fail their competency exam annually; these applicants would be added to North Carolina’s Registry under reciprocity.⁸

Tables 7 indicates that approximately 33% of out-of-state nurse aides successfully passed the North Carolina nurse aide I competency examination the first time. Table 8 depicts the number of out-of-state nurse aides that took the competency examination more than once and passed.⁸

⁷ Office of Inspector General: <https://oig.hhs.gov/oei/reports/oei-05-01-00030.pdf>

⁸ Data provided by NCS Pearson, Inc. d/b/a Pearson VUE. Pearson VUE is the state-approved nurse aide I competency evaluation program vendor.

Table 7*

Fiscal Year	Written (Or Oral) Examination Passed	Skills Evaluation Examination Passed	Passed Both Examinations
July 1, 2016 to June 30, 2017	483	137	135
July 1, 2017 to June 30, 2018	430	137	134
July 1, 2018 to June 30, 2019	399	159	156

*First time test takers only

Table 8*

Fiscal Year	Written (Or Oral) Examination Passed	Skills Evaluation Examination Passed
July 1, 2016 to June 30, 2017	19	75
July 1, 2017 to June 30, 2018	12	72
July 1, 2018 to June 30, 2019	11	76

*Repeat test takers only

To ensure the safety of those receiving care by nurse aides, the North Carolina Board of Nursing has determined the nursing tasks which can be performed by nurse aides in North Carolina. In addition, the North Carolina Board of Nursing requires that a registered nurse validate the competencies of each nurse aide prior to delegating nursing tasks. Ultimately, a licensed nurse maintains accountability and responsibility for the delivery of safe and competence care. The licensed nurse must monitor the client's status and response to care provided on an ongoing basis.⁹

Decisions regarding the delegation of tasks to nurse aides are made by the licensed nurse on a case-by-case basis. All the following criteria must be met before delegation of any task can occur:⁹

- The task is performed frequently in the daily care of a client or group of clients
- The task is performed according to an established sequence of steps.
- The task involves little to no modification from one client situation to another.
- The task may be performed with a predictable outcome.
- The task does not involve on-going assessment, interpretation or decision-making that cannot be separated from the task itself.
- The task does not endanger the client's life or well-being.

Division of Health Service Regulation (DHSR)

From April 20, 2020 to June 20, 2020, DHSR received 788 reciprocity applications.

- 368 applications were approved
- 27 applications were denied
- 374 applications were deemed incomplete
- 19 applications had a pending status

DHSR receives approximately 20 reciprocity applications per business day. If this trend continues, DHSR will receive approximately 5,000 reciprocity applications annually.

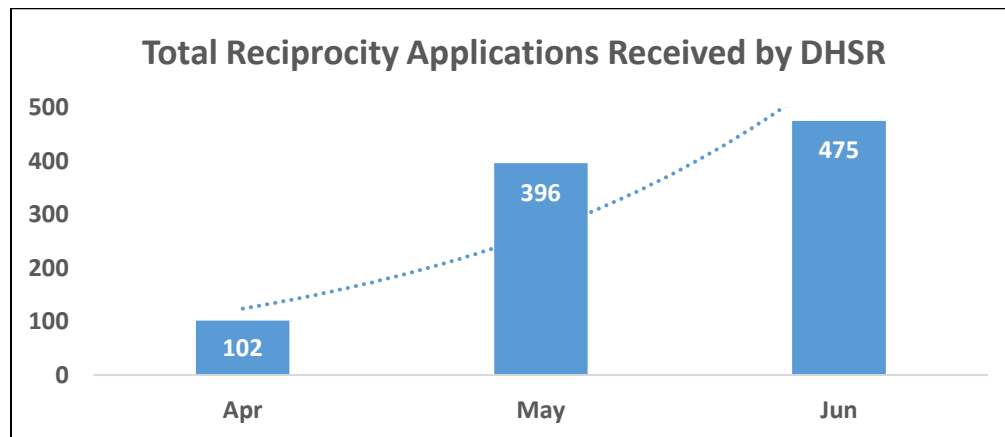
⁹ North Carolina Board of Nursing: <https://www.ncbon.com/vdownloads/nurse-aide/nurse-aide-i-tasks-2010-revisions.pdf>

The amount of time needed by staff to process each reciprocity application is approximately 60 minutes. Staffing costs are approximately \$27 per hour including wages and benefits. The total estimated annual cost for DHSR staff to process 5,000 reciprocity applications is \$135,000.

The average number of days from when DHSR receives a reciprocity application to when DHSR notifies the applicant of the agency's decision is approximately 4 business days. This timeframe is in alignment with other states.

- Georgia: 14 business days
- Missouri: 7-10 days
- Montana: 5-7 days
- Nebraska: 30 days
- Rhode Island: a minimum of 8 weeks for the entire licensure process to be completed
- Tennessee: 1 week
- Virginia: 30-45 business days

The permanent rule allows DHSR 10 business days to process a reciprocity application. Currently, DHSR's processing rate is 4 business days. According to the graph below, the number of reciprocity applications received from April 20, 2020 to June 28, 2020 has increased each month. The rule currently allows for adequate processing time. However, if the number of applications continues to increase exponentially, DHSR will need additional staff to meet the 10-business day timeframe.



Summary

Overall, North Carolina should implement reciprocity not only during the COVID-19 pandemic but seek to make reciprocity a permanent rule in year 2021. As the population in North Carolina continues to increase, specifically regarding individuals aged 65 and older, North Carolina will likely experience an annual nurse aide staffing shortage due to either occupational separations or occupational growth.¹⁰ As vacancies regarding nurse aide positions in nursing homes increase, it becomes even more challenging for existing nurse aides to deliver quality of care to all residents entrusted to them.¹¹

Reciprocity aims to reduce the nurse aide shortage in North Carolina. By implementing reciprocity, the requirement for all out-of-state nurse aides, in active and good standing status, to take the nurse aide I competency examination in order to be listed on the NC Nurse Aide I Registry is no longer required. In addition, reciprocity eliminates the financial burden for out-of-state nurse aides to pay at least \$120 to

¹⁰ NC Department of Commerce – Labor & Economic Analysis Division:

https://files.nc.gov/nccommerce/documents/LEAD/Projections/2026_NC_Employment_Projections_Summary.pdf

¹¹ Office of Inspector General: <https://oig.hhs.gov/oei/reports/oei-05-01-00030.pdf>

take the nurse aide I competency examination. Furthermore, reciprocity expedites the timeframe by at least 12 days for an out-of-state nurse aide to be listed on the NC Nurse Aide I Registry and thus supports healthcare facilities in the ability to fill nurse aide vacancies sooner.

However, reciprocity may increase the risk to clients and place an additional burden on healthcare facilities for on-the-job training. Assuming applicant trends continue, approximately 66% of out-of-state nurse aide applicants fail the competency examination annually; these applicants would be added to the North Carolina Nurse Aide I Registry under reciprocity.¹²

The overall estimated projected annual cost to DHSR to implement reciprocity is \$135,000. Since the implementation of reciprocity in April 2020, as an emergency rule and temporary rule, DHSR has received approximately 20 reciprocity applications per business day. Of the applications received, approximately 50% are approved. Thus, if this trend continues, reciprocity has the potential to add more than 2,000 nurse aides annually to help alleviate the nurse aide shortage in North Carolina.

¹² Data provided by NCS Pearson, Inc. d/b/a Pearson VUE. Pearson VUE is the state-approved nurse aide I competency evaluation program vendor.

Appendix: Proposed Rule Text

10A NCAC 130 .0301 is proposed for amendment as follows:

SECTION .0300 - NURSE AIDE I REGISTRY

10A NCAC 130 .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION

(a) To be eligible to be listed on the NC Nurse Aide I Registry by the Health Care Personnel Education and Credentialing Section, a person ~~shall~~ shall:

- (1) pass a Nurse Aide I training program approved by the Department in accordance with 42 CFR ~~Part~~ 483.151 through ~~Part~~ 42 CFR 483.152 and the State of North Carolina's Nurse Aide I competency ~~exam.~~ exam; or
- (2) apply to the Department for approval to be listed on the NC Nurse Aide I Registry by reciprocity of a nurse aide certification or registration from another State to North Carolina.

(b) In applying for reciprocity of a nurse aide certification or registration to be listed on the NC Nurse Aide I Registry pursuant to Subparagraph (a)(2) of this Rule, the applicant shall:

- (1) submit a completed application to the Department that includes the following:
 - (A) first, middle, and last name;
 - (B) the applicant's prior name(s), if any;
 - (C) mother's maiden name;
 - (D) gender;
 - (E) social security number;
 - (F) date of birth;
 - (G) mailing address;
 - (H) email address;
 - (I) home telephone number;
 - (J) any other State registries of nurse aides upon which the applicant is listed;
 - (K) certification or registration numbers for any State nurse aide registries identified in Part (b)(1)(J) of this Rule;
 - (L) original issue dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule;
 - (M) expiration dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule; and
 - (N) employment history;
- (2) provide documentation verifying that his or her registry listing is active and in good standing in the State(s) of reciprocity, dated no older than 30 calendar days prior to the date the application is received by the Department; and
- (3) provide a copy of his or her Social Security card and an unexpired government-issued identification containing a photograph and signature.

(c) For the applicant to be approved for reciprocity of a nurse aide certification or registration and be listed on the NC Nurse Aide I Registry, the Department shall verify the following:

- (1) the applicant has completed an application in accordance with Subparagraph (b)(1) of this Rule;
- (2) the applicant is listed on another State's registry of nurse aides as active and in good standing;
- (3) the applicant has no pending or substantiated findings of abuse, neglect, exploitation, or misappropriation of resident or patient property recorded on other State registries of nurse aides;
- (4) if the applicant has been employed as a nurse aide for monetary compensation consisting of at least a total of eight hours of time worked performing nursing or nursing-related tasks delegated and supervised by a Registered Nurse, then the applicant shall provide the employer name, employer address, and dates of employment for the previous 24 consecutive months;
- (5) the name listed on the Social Security card and government-issued identification containing a photograph and signature submitted with the application matches the name listed on another State's registry of nurse aides or that the applicant has submitted additional documentation verifying any name changes; and
- (6) the applicant completed a State-approved nurse aide training and competency evaluation program that meets the requirements of 42 CFR 483.152 or a State-approved competency evaluation program that meets the requirements of 42 CFR 483.154.

(d) The Department shall within 10 business days of receipt of an application for reciprocity of a nurse aide certification or registration or receipt of additional information from the applicant:

- (1) inform the applicant by letter whether he or she has been approved; or
- (2) request additional information from the applicant.

The applicant shall be added to the NC Nurse Aide I Registry within three business days of Department approval.

~~(b)~~ (e) This Rule incorporates 42 CFR Part 483 Subpart D by reference, including all subsequent amendments and editions. Copies of the Code of Federal Regulations may be accessed electronically free of charge from www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

~~(e)~~ (f) The State of North Carolina's Nurse Aide I competency exam shall include each course requirement specified in the Department-approved Nurse Aide I training program as provided for in 42 CFR ~~Part~~ 483.152.

~~(d)~~ (g) The State of North Carolina's Nurse Aide I competency exam shall be administered and evaluated only by the Department or its contracted testing agent as provided for in 42 CFR ~~Part~~ 483.154.

~~(e)~~ (h) The Department shall include a record of completion of the State of North Carolina's Nurse Aide I competency exam in the NC Nurse Aide I Registry within 30 ~~business~~ days of passing the written or oral exam and the skills demonstration as provided for in 42 CFR ~~Part~~ 483.154.

~~(f)~~ (i) If the State of North Carolina's Nurse Aide I competency exam candidate does not pass the written or oral exam and the skills demonstration as provided for in 42 CFR ~~Part~~ 483.154, the candidate shall be advised by the Department of the areas that the individual did not pass.

~~(g)~~ (j) Every North Carolina's Nurse Aide I competency exam candidate shall ~~have, as provided for in 42 CFR Part 483.154,~~ have the opportunity to take the exam at maximum three times before being required to retake and pass a Nurse Aide I training program.

~~(h) A person who is currently listed on any state's Nurse Aide I Registry shall not be required to take the Department-approved Nurse Aide I training program to be listed or, if his or her 24-month listing period has expired, relisted on~~

~~the NC Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.~~

(+) (k) U.S. military personnel who have completed medical corpsman training and retired or non-practicing nurses shall not be required to take the Department-approved Nurse Aide I training program to be listed or relisted on the Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

History Note: Authority G.S. 131E-255; 42 CFR ~~Part 483;~~ 483.150; 42 CFR 483.151; 42 CFR 483.152; 42 CFR 483.154; 42 CFR 483.156; 42 CFR 483.158;

Eff. January 1, 2016;

Emergency Amendment Eff. April 20, 2020;

Temporary Amendment Eff. June 26, ~~2020~~ 2020;

Amended Eff. April 1, 2021.