



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Adult Care Home Administrators

FROM: Mark Payne *Mark*

DATE: August 8, 2022

RE: UPDATE - Requests for Temporary Waivers or Modifications of Enforcement of the Construction, Design, and Physical Plant Requirements of Adult Care Homes Pursuant to 10A NCAC Subchapter 13F pursuant to the authority granted in the 2022 Appropriations Act

On June 10, 2020 a memorandum was issued by the North Carolina Department of Health and Human Services (DHHS), Division of Health Service Regulation (DHSR) that waived or modified specific legal or regulatory constraints that would prevent or impair certain DHSR regulated health care services during the North Carolina State of Emergency declared in Executive Order 116.

The authority for the June 10, 2020 waivers and modifications was granted by the Governor, with the concurrence of the Council of State, in Section 1 of Executive Order 130 and Section 2 of Executive Order 139 (extended by Executive Order Nos. 144, 148, 152, 165, 177, 193, 211, 225, 236, 245 and 256). Additionally, Section 1 of Executive Order 130 delegated authority to DHHS to waive or modify enforcement of any legal or regulatory constraints that would prevent or impair 1) increasing health care facilities' licensed bed capacity and 2) relocating beds from a currently operating hospital, nursing home facility, or adult care home to another hospital, nursing home facility, adult care home, or other physical space.

Pursuant to Section 1 of Executive Order 148, these waivers and modifications remain in effect for thirty (30) days following termination of the Executive Orders extending the authority for the waivers. Executive Order 256 was not extended and expired on July 15, 2022; therefore, the waivers and modifications issued on June 10, 2020 and waivers or modifications approved pursuant to the memorandums will expire on August 14, 2022.

On July 7, 2022, North Carolina Session Law 2022-74 (the 2022 Appropriations Act), was enacted and included legislation for emergency flexibilities for certain facilities and services regulated by DHSR. Section 9E.2.(b) added to language to North Carolina General Statute §

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

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131D-7, that granted authority to DHSR to temporarily waive any rules adopted by the Medical Care Commission pertaining to adult care homes during a declaration of a public health emergency by the Secretary.

Pursuant to the authority vested in the United States Secretary of Health and Human Services (Secretary) under Section 319 of the Public Health Service Act, determined that a public health emergency exists as a result of the consequences of the Coronavirus Disease 2019 (COVID-19 Public Health Emergency) since January 27, 2020. Former Secretary Azar previously renewed the determination that a public health emergency exists and has existed since January 27, 2020 nationwide on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021 and Secretary Becerra renewed the determination on April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, and July 15, 2022.

In response to the COVID-19 Public Health Emergency and after careful consideration, DHSR is waiving or modifying enforcement of the regulatory requirements contained in this memorandum. DHSR's intent in issuing the following waivers is to protect the health, safety, and welfare of residents and visitors located in North Carolina and provide necessary relief to Adult Care Homes regulated under 10A NCAC Subchapter 13F in responding to the COVID-19 pandemic and to allow for more efficient treatment of patients.

Request for waivers made pursuant to the June 10, 2020 memorandum that were approved by DHSR will remain in effect pursuant to the authority granted in the 2022 Appropriations Act and will expire at the end of the COVID-19 Public Health Emergency or at such time as DHSR determines that an emergency no longer exist or at any time. Additionally, DHSR will continue to accept requests for waivers as outlined memorandum.

The following waivers issued pursuant to the 2022 Appropriations Act will expire at the end of the COVID-19 Public Health Emergency or at such time as DHSR determines that an emergency no longer exist or at any time as determined by DHSR:

1. Application of Physical Plant Requirements: Resident bedrooms and resident services are not permitted on the second floor of an adult care home. In addition, the licensed bed capacity of an adult care home shall be in compliance with G.S. 131E, Article 9 (Certificate of Need). To allow for the emergency increase of bed capacity to meet the demand for assisted living services during the COVID-19 pandemic, these requirements, which are found at 10A NCAC 13F .0301(4) and (6), are hereby waived to allow for requests for waivers to be submitted to DHSR.
2. Design and Construction: Any existing building converted from another use to an adult care facility or any existing licensed facility that is closed or vacant for more than one year shall meet all requirements of a new facility. These requirements, which are found at 10A NCAC 13F .0302(c) and (d), are hereby waived to allow for requests for waivers to be submitted to DHSR.
3. Physical Environment: An adult care home shall provide living arrangements to meet the needs of the residents, the live-in staff, and other live-in persons. To that end, living rooms, recreational areas, dining rooms, bedrooms, bathrooms, and storage rooms have

certain space requirements and require certain amenities to properly function for their intended purposes. To allow for the emergency use of various spaces to meet the demand for assisted living services during the COVID-19 pandemic, the following space requirements are hereby waived to allow for requests for waivers to be submitted to DHSR:

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| 10A NCAC 13F .0305(b)(1) | 10A NCAC 13F .0305(d)(1) |
| 10A NCAC 13F .0305(b)(2) | 10A NCAC 13F .0305(d)(5) |
| 10A NCAC 13F .0305(b)(3) | 10A NCAC 13F .0305(d)(7) |
| 10A NCAC 13F .0305(b)(4) | 10A NCAC 13F .0305(d)(10) |
| 10A NCAC 13F .0305(c)(1) | 10A NCAC 13F .0305(e)(1) |
| 10A NCAC 13F .0305(c)(2) | 10A NCAC 13F .0305(e)(8) |
| 10A NCAC 13F .0305(c)(3) | 10A NCAC 13F .0305(f)(1) |
| 10A NCAC 13F .0305(c)(4) | 10A NCAC 13F .0305(f)(4)(a) |

4. Special Care Unit Building Requirements: In addition to meeting all applicable building codes and licensure requirements for adult care homes, special care units must also meet additional building requirements. Specifically, the requirements that (i) living and dining space shall be required within the unit at a total rate of 30 square feet per resident; and (ii) a toilet and hand lavatory shall be provided within the unit for every five (5) residents, which are found at 10A NCAC 13F .1304(7) and (9), are hereby waived to allow for requests for waivers to be submitted to DHSR.

Should you have any questions about this memorandum or need additional information, please contact Jeff Harms, Acting Section Chief of the Construction Section.

cc: Julie Cronin
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