



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Family Care Home Administrators

FROM: Mark Payne *MP*

DATE: August 8, 2022

RE: Requests for Temporary Waivers of Modifications of Enforcement of the Construction, Design, and Physical Plant Requirements of Family Care Homes Pursuant to 10A NCAC Subchapter 13G 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

OFFICE OF THE DIRECTOR

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 2701 Mail Service Center, Raleigh, NC 27699-2701
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3750 • FAX: 919-733-2757

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

131D-7, that granted authority to DHSR to temporarily waive any rules adopted by the Medical Care Commission pertaining to adult care homes (including family 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 (including Family Care Homes) regulated under 10A NCAC Subchapter 13G 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: Existing licensed homes or portions of existing licensed homes shall meet the licensure and code requirements in effect at the time of construction, change in service or bed count, addition, renovation, or alteration. To allow for the emergency change in service or bed count, addition, renovation, or alteration to meet the demand for family care home services during the COVID-19 pandemic, this requirement, which is found/codified at 10A NCAC 13G .0301(2), is hereby waived.
2. Design and Construction: Any existing building converted from another use to a family care home shall meet all of the requirements of a new facility. In addition, any existing licensed facility that has had its licensed terminated for more than 60 days shall meet all requirements of a new facility prior to being relicensed. Further, the ceiling in a family care home must be at least seven and one-half feet from the floor. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, these requirements, which are found at 10A NCAC 13G .0302(c), (d), and (h), are hereby waived.

3. Living Room: Family care homes licensed on or after April 1, 1984, shall have a living room area of at least 200 square feet. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, this requirement, which is found at 10A NCAC 13G .0305(a), is hereby waived.
4. Dining Room: Family care homes licensed on or after April 1, 1984, shall have a dining room area of at least 120 square feet. When the dining area is used in combination with the kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas. This work space shall not be used as the dining area. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, these requirements, which are found at 10A NCAC 13G .0306(a) and (b), are hereby waived.
5. Bedrooms: The bedrooms in a family care home must meet certain space requirements, cannot be occupied by more than two residents, and must contain minimum storage space for clothing. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, these requirements, which are found at 10A NCAC 13G .0308(d), (f), and (h), are hereby waived
6. Bathrooms: Family care homes licensed on or after April 1, 1984, shall have one full bathroom for each five or fewer persons, including live-in staff and family. In addition, the bathroom door shall not be located more than 40 feet from any residents' bedroom door. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, these requirements, which are found at 10A NCAC 13G .0309(a) and (d), are hereby waived.
7. Laundry Room: The laundry equipment in a family care home shall be located out of the living, dining, and bedroom areas. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, this requirement, which is found at 10A NCAC 13G .0313, is hereby waived.
8. Housekeeping and Furnishings: The dining room shall have tables and chairs to seat all residents eating in the dining room. To allow for the emergency use of various spaces to meet the demand for family care home services during the COVID-19 pandemic, this requirement, which is found at 10A NCAC 13G .0315(d)(1), is hereby waived.

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

cc: Julie Cronin
Emery Milliken
Megan Lamphere
Jeff Harms
Bethany Burgon
Derek Hunter