



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**


ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Licensed Mental Health, Developmental Disabilities, & Substance Use Services Facilities

FROM: Robin Sulfridge, Chief 
Mental Health Licensure & Certification

DATE: October 30, 2024

RE: Amended Waiver/Modification of Enforcement of Mental Health Licensure and Certification Rules – 10A NCAC Chapter 27

On September 25, 2024, Governor Roy Cooper issued Executive Order No. 315, Declaration of a Statewide State of Emergency for Tropical Storm Helene (Helene State of Emergency), declaring it likely that Tropical Storm Helene would cause significant impacts to the State of North Carolina. Governor Cooper declared that the anticipated impacts from Helene constitute a state of emergency as defined in N.C. Gen. Stat §§ 166A-19.3(6) and 166A-19.3(20). Governor Cooper authorized the State of Emergency, with concurrence from the Council of State, pursuant to N.C. Gen. Stat §§ 166A-19.10 and 166A-20, activating the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies.

On September 28, 2024, President Joseph R. Biden, Jr., declared that a major disaster exists in the State of North Carolina and ordered Federal aid to supplement State, tribal, and local recovery efforts in the areas affected by Tropical Storm Helene beginning on September 25, 2024, and continuing.

On September 28, 2024, Health and Human Services Secretary Xavier Becerra declared a public health emergency (PHE) stating, “as a result of the consequences of Hurricane Helene on the State of North Carolina, on this date and after consultation with public health officials as necessary, I, Xavier Becerra, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby determine that a public health emergency exists and has existed since September 25, 2024, in the State of North Carolina.”

Secretary Becerra, as required under Section 1135(d) of the Social Security Act (the Act), 42 U.S.C. § 1320b-5, further notified that effective on October 1, 2024, certain HIPAA and Medicare, Medicaid, and Children’s Health Insurance Program requirements are waived or modified and that

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the waivers and/or modifications are necessary to carry out the purposes of Section 1135 of the Act.

N.C. Gen. Stat § 122C-27.5 gives authority to the Division of Health Service Regulation to temporarily waive any rule implementing Article 2 of Chapter 122C pertaining to licensed mental health facilities in the event of a declaration of a state of emergency by the Governor in accordance with Article 1A of Chapter 166A of the General Statutes; a declaration of a national emergency by the President of the United States; a declaration of a public health emergency by the Secretary of the United States Department of Health and Human Services; to the extent necessary to allow for consistency with any temporary waiver or modification issued by the Secretary of the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services under Section 1135 or 1812(f) of the Social Security Act; or when the Division of Health Service Regulation determines the existence of an emergency that poses a risk to the health or safety of clients.

After careful consideration and in cooperation with our mental health providers, DHHS is waiving or modifying enforcement of the regulatory requirements contained in this memorandum. DHHS's intent in issuing the following waivers is to protect the health, safety, and welfare of clients and visitors located in North Carolina and will provide necessary relief to mental health providers under the effects of the Helene State of Emergency.

For the purposes of this memorandum, the affected counties are Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey (the "Affected Counties"). **The waivers and modifications in this memorandum will apply only to mental health facilities operating in the Affected Counties and to facilities that have admitted clients from the Affected Counties.** All other licensed mental health facilities are required to continue to comply with applicable licensure rules. Notwithstanding the below waivers, mental health facilities impacted by the Public Health Emergency should strive to return to normal operations and meet all applicable rules as soon as possible.

Training Extensions

1. **Training on Alternatives to Restrictive Interventions** under 10A NCAC 27E .0107 (e) and (i)(7) requires that (e). Formal refresher training must be completed by each service provider periodically (minimum annually) and (i)(7) Trainers shall teach a training program aimed at preventing, reducing and eliminating the need for restrictive interventions at least once annually. The deadlines to complete the refresher training are extended for an additional **one hundred and eighty (180) days.**
2. **Training in Seclusion, Physical Restraint and Isolation Time-Out** under 10A NCAC 27E .0108 (e) and (i) (6) (10) require formal refresher training must be completed by each service provider periodically (minimum annually) and that trainers shall teach a program on the use of restrictive interventions at least once annually. The deadlines to complete the refresher training are extended for an additional **one hundred and eighty (180) days.**

Staff Supervision

1. **Competencies and Supervision of Associate Professionals** The deadline for the governing body for the facility to develop and implement policies for the initiation of an individualized supervision plan upon hiring an associate professional pursuant to 10A NCAC 27G .0203(f) is hereby extended ninety (90) days. The deadline for the governing body for the facility to develop and implement policies for the initiation of an individualized supervision plan upon hiring a paraprofessional pursuant to 10A NCAC 27G .0204(f) is hereby extended **ninety (90) days**.
2. **Competencies and Supervision of Paraprofessionals** 10A NCAC 27G .0204 requires deadlines for competencies. The deadline for the governing body for the facility to develop and implement policies for the initiation of an individualized supervision plan upon hiring a paraprofessional pursuant to 10A NCAC 27G .0204(f) is hereby extended **ninety (90) days**.

Client Assessment and Treatment Planning

1. **Client Assessment**: For clients admitted to the facility with an existing treatment/habilitation or service plan, the deadline to complete the client assessment pursuant to 10A NCAC 27G .0205(a) shall be **sixty (60) days** after admission. During the period between admission and the client's assessment, services shall be provided in accordance with the client's existing treatment/habilitation or service plan.
2. **Client Treatment/Habilitation or Service Plan**: For clients admitted to the facility with an existing treatment/habilitation or service plan, the deadline to develop a treatment/habilitation or service plan within 30 days of admission for clients who are expected to receive services beyond thirty days pursuant to 10A NCAC 27G .0205(b) (c) shall extended to **ninety (90) days** from the date the assessment. During the period prior to the development of the treatment/habilitation or service plan, services shall be provided in accordance with the client's existing treatment/habilitation or service plan and any assessment conducted by the facility after the client's admission.

Partial Hospitalization

1. **Scope – Partial Hospitalization**: The requirement that Partial Hospitalization services must be provided at a Partial Hospitalization facility pursuant to 10A NCAC 27G .1101 is hereby waived. For the duration of this waiver, Partial Hospitalization services may be provided in a client's residence.
2. **Operating Hours – Partial Hospitalization**: The requirement that a Partial Hospitalization facility must operate for a minimum of four hours per day, five days per week (exclusive of transportation time) pursuant to 10A NCAC 27G .1103(b) is hereby waived in part. For the duration of the waiver, Partial Hospitalization facilities must operate a minimum of ten hours per week (exclusive of transportation time).

Psychosocial Rehabilitation (PSR)

1. **Operations – PSR**: The requirement that a Psychosocial Rehabilitation (PSR) facility must provide PSR services at its own facility pursuant to 10A NCAC 27G .1203(a) is hereby waived. For the duration of this waiver, PSR services may be provided in a client's residence.
2. **Operating Hours – PSR**: The requirement that a PSR facility must operate for a minimum of five hours per day, five days per week (exclusive of transportation time) pursuant to 10A NCAC 27G .1203(c) is

hereby waived in part. For the duration of the waiver, PSR facilities must operate a minimum of ten hours per week (exclusive of transportation time).

Adult Developmental and Vocational Programs (ADVP)

1. **Scope – ADVP:** The requirement that an Adult Developmental and Vocational Program (ADVP) must have a majority of its activities be carried out on the premises of a site specifically designed for that purpose pursuant to 10A NCAC 27G .2301(d) is hereby waived. For the duration of this waiver, ADVP activities may be carried out in a client’s residence.

Medically Monitored Inpatient Withdrawal Services

1. **Staff Training:** The requirement that direct care staff members of a Non-Hospital Medical Detoxification for Individuals who are Substance Abusers (Medically Monitored Inpatient Withdrawal Services) facility must receive continuing education as specified in 10A NCAC 27G .3102(e) is hereby waived for the duration of this waiver.

Ambulatory Withdrawal Management With & Without Extended On-Site Monitoring

1. **Staff Training:** The requirement that direct care staff members of Outpatient Detoxification for Substance Abuse (Ambulatory Withdrawal Management With Extended On-Site Monitoring programs and Ambulatory Withdrawal Management Without Extended On-Site Monitoring) programs must receive continuing education as specified in 10A NCAC 27G .3302(d) is hereby waived for the duration of this waiver.

Operations of Opioid Treatment Programs (OTPs):

1. **Staff Training – OTP:** The requirement that each direct care staff member shall receive continuing education as specified in 10A NCAC 27G .3603(c) is hereby waived for the duration of this waiver.
2. **Waiver of Rules for Unsupervised Take Home Methadone Doses – OTP:** DHR hereby waives 10A NCAC 27G .3604(f)(1)(A)–(G), (f)(2)(A)–(C) and (f)(3)(A) and permits Opioid Treatment Programs (OTPs) in the Affected Counties to provide unsupervised medication as permitted under 42 C.F.R § 8.12(i). OTPs in the Affected Counties may provide unsupervised take-home doses of methadone in accordance with the following time in treatment standards: (1) If patient in treatment 0–14 days, up to 7 unsupervised take-home doses of methadone may be provided to the patient; (2) If patient in treatment 15–30 days, up to 14 unsupervised take-home doses of methadone may be provided to the patient; (3) If patient 31 or more days in treatment, up to 28 unsupervised take-home doses of methadone may be provided to the patient. OTP decisions regarding dispensing methadone for unsupervised use under this exemption shall be determined by an appropriately licensed OTP medical practitioner or the medical director. In all instances, it is within the clinical judgement of the OTP practitioner to determine the actual number of take-home doses within the ranges set forth above. In determining which patients may receive unsupervised doses, the medical director or program medical practitioner shall consider whether the therapeutic benefits of unsupervised doses outweigh the risks, with particular attention paid to the risks of a patient losing access to medication continuity during the State of Emergency.
3. **Random Testing – OTP:** The requirements that random testing for alcohol and other drugs shall be conducted on each active opioid treatment client at a minimum of one random drug

test each month of continuous treatment, and that in two out of each three-month period of a client's continuous treatment episode, at least one random drug test will be observed by program staff, pursuant to 10A NCAC 27G .3604(h), are hereby waived. For the duration of this waiver, OTPs are not required to perform random drug tests of clients at any minimum interval, and OTPs are not required to have random drug tests observed by program staff at any minimum interval.

Substance Abuse Intensive Outpatient Program (SAIOP)

1. **Family Counseling – SAIOP:** The requirement that a SAIOP shall include in its services family counseling pursuant to 10A NCAC 27G .4401(c)(3) is hereby waived if the family is unavailable, sick, or unwilling to participate in telehealth or telephonic interventions. SAIOP shall continue to provide family counseling services when the circumstances permit.
2. **Drug Screening – SAIOP:** The requirement that a SAIOP shall include in its services biochemical assays to identify recent drug use (e.g. urine drug screens) pursuant to 10A NCAC 27G .4401(c)(9) is hereby waived. For the duration of this waiver, SAIOP is not required to perform drug screens of clients.
3. **Staff – SAIOP:** The requirement that a SAIOP's Licensed Clinical Addictions Specialist or Certified Clinical Supervisor be on site a minimum of 50% of the hours the program is in operation pursuant to 10A NCAC 27G .4402(a) is hereby waived. For the duration of this waiver, a SAIOP's Licensed Clinical Addictions Specialist or Certified Clinical Supervisor must be available virtually when program is in operation, but need not be on site for any minimum number of hours.
4. **Operations – SAIOP:** The requirement that a SAIOP shall operate in a setting separate from the client's residence pursuant to 10A NCAC 27G .4403 is hereby waived. For the duration of this waiver, SAIOP services may be provided in a client's residence.
5. **Operating Hours – SAIOP:** The requirement that a SAIOP must operate for a minimum of three hours per day at least three days per week, with a maximum of two days between offered services, pursuant to 10A NCAC 27G .4403(b), is hereby waived in part. Additionally, the requirement that a SAIOP shall provide services a minimum of nine hours per week for each client pursuant to 10A NCAC 27G .4403(d) is hereby waived in part. For the duration of the waiver, SAIOP must provide a minimum of 1.5 hours of treatment per day at least three days per week.

Substance Abuse Comprehensive Outpatient Treatment Program (SACOT)

1. **Family Counseling – SACOT:** The requirement that a SACOT shall include in its services family counseling pursuant to 10A NCAC 27G .4501(c)(3) is hereby waived if the family is unavailable, sick, or unwilling to participate in telehealth or telephonic interventions. SACOT shall continue to provide family counseling services when the circumstances permit.

2. **Drug Screening – SACOT:** The requirement that a SACOT shall include in its services biochemical assays to identify recent drug use (e.g. urine drug screens) pursuant to 10A NCAC 27G .4501(c)(9) is hereby waived. For the duration of this waiver, SACOT is not required to perform drug screens of clients.
3. **Staff – SACOT:** The requirement that a SACOT’s Licensed Clinical Additions Specialist or Certified Clinical Supervisor be on site a minimum of 90% of the hours the program is in operation pursuant to 10A NCAC 27G .4502(a) is hereby waived. For the duration of this waiver, a SACOT’s Licensed Clinical Additions Specialist or Certified Clinical Supervisor must be available virtually when program is in operation, but need not be on site for any minimum number of hours.
4. **Operations – SACOT:** The requirement that a SACOT shall operate in a setting separate from the client’s residence pursuant to 10A NCAC 27G .4503(a) is hereby waived. For the duration of this waiver, SACOT services may be provided in a client’s residence.
5. **Operating Hours – SACOT:** The requirement that a SACOT must operate at least four hours per day at least five days per week, with a maximum of two days between offered services, pursuant to 10A NCAC 27G .4503(c), is hereby waived in part. Additionally, the requirement that a SACOT shall provide services a minimum of twenty hours per week for each client pursuant to 10A NCAC 27G .4503(b) is hereby waived in part. For the duration of the waiver, SACOT must provide a minimum of two hours of treatment per day, at least five days per week.

These waivers and modifications of enforcement in this memorandum have a retroactive effective date of September 25, 2024, the effective date of Executive Order 315. All waivers and modifications of enforcement made in this memorandum shall remain in effect until rescinded by the Division of Health Service Regulation.

The above waivers and modifications do not impact any other applicable licensure requirements, and **all licensure rules, other than those impacted by waiver or modification, remain in effect.**

If a facility would like to request a temporary increase in licensed capacity, request emergency relocation of the facility to another location, or request waiver of other applicable rules, the facility should submit a waiver request to the Mental Health Licensure and Certification Section.

Should you have any questions about this memorandum or need additional information, please contact Robin Sulfridge, Chief of the Mental Health Licensure and Certification Section, at Robin.Sulfridge@dhhs.nc.gov.