



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

October 14, 2024

MEMORANDUM

TO: Licensed Adult Care Home and Family Care Home Providers

FROM: Megan Lamphere, Chief 

RE: Waiver/Modification of Enforcement of Adult Care Home and Family Care Home Licensure Rules
– 10A NCAC Subchapter 13F and 13G

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

N.C. Gen. Stat § 131D-7(a1) gives authority to the Division of Health Service Regulation to temporarily waive any rule of the Medical Care Commission pertaining to adult care homes 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

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

ADULT CARE LICENSURE SECTION

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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 residents.

After careful consideration and in cooperation with our adult care home 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 residents and visitors located in North Carolina and to provide necessary relief to adult care home and family care home 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 adult care homes and family care homes operating in the Affected Counties and to facilities that have admitted residents from the Affected Counties.** All other licensed adult care homes and family care homes are required to continue to comply with applicable licensure rules. Notwithstanding the below waivers, adult care homes and family care homes impacted by the Public Health Emergency should strive to return to normal operations and meet all applicable rules as soon as possible.

Personnel Requirements

1. **Staff Reciprocity for Tuberculosis (TB) Testing:** The tuberculosis testing requirement under 10A NCAC 13F .0406 and 10A NCAC 13G .0405 is waived, so long as the incoming employee has been tested for tuberculosis within the past year and completes a tuberculosis screening/questionnaire. Documentation of the above requirements being met shall be maintained in the employee's personnel record. At this time, this waiver only applies to staff who are current employees of an adult care home or family care home in North Carolina or those who have been employed within the past 30 days in an adult care home or family care home in North Carolina.
2. **Staff Reciprocity for Medication Aide Competency Validation:** The medication aide competency validation requirement under 10A NCAC 13F .0503(d) and 10A NCAC 13G .0503(d) is waived, so long as the incoming employee has successfully completed the clinical skills validation portion of the competency evaluation at the evacuating facility. Documentation of the above requirement being met shall be maintained in the employee's personnel record. At this time, this waiver only applies to staff who are current employees of an adult care home or family care home in North Carolina that evacuated from the facility due to Tropical Storm Helene and are temporarily working at a sheltering facility.
3. **Personal Care Training and Competency:** Superseding 10A NCAC 13F .0501(b) and 10A NCAC 13G .0501(b), employees of adult care facilities who provide personal care or who directly supervise those who provide personal care shall now have nine (9) months after the date of hiring to complete the 80-hour personal care training and competency evaluation program. However, facilities must still assure the employee receives the necessary training and supervision on the performance of individual job assignments prior to meeting the training and competency requirements, as provided in 10A NCAC 13F .0501(c) and 10A NCAC 13G .0501(c), until such time as the employee has successfully

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completed the personal care training and competency evaluation program. Documentation of the training and supervision shall be maintained in the employee's personnel record.

Resident Admissions & Other Requirements

1. **Annual Medical Exam**: Deadlines for providers to obtain a resident's annual medical exam via Form FL-2, North Carolina Medicaid Program Long Term Care Services, in accordance with 10A NCAC 13F .0703(c) and 10A NCAC 13G .0702(c), will be extended an **additional forty-five (45) days** for residents who do not have an existing FL-2.

For residents admitted to the facility with an existing FL-2, the requirement to obtain a resident's annual medical exam via Form FL-2, North Carolina Medicaid Program Long Term Care Services, in accordance with 10A NCAC 13F .0703(c) and 10A NCAC 13G .0702(c), is hereby waived. The facility shall continue to use the resident's existing FL-2 until a new medical exam is required pursuant to 10A NCAC 13F .0703(b) or 10A NCAC 13G .0702(b).

2. **Resident Register Initial Assessment**: Deadlines for providers to complete and sign the Resident Register initial assessment within 72 hours pursuant to 10A NCAC 13F .0704(b) and .0801(a) and 10A NCAC 13G .0704(b) and .0801(a) will be extended an **additional forty-five (45) days** for residents who do not have an existing Resident Register initial assessment.

For residents admitted to the facility with an existing Resident Register initial assessment, the requirement for providers to complete and sign the Resident Register initial assessment within 72 hours pursuant to 10A NCAC 13F .0704(b) and .0801(a) and 10A NCAC 13G .0704(b) and .0801(a) is hereby waived.

3. **Resident Assessment**: Deadlines for providers to ensure that an assessment of each resident is completed within thirty days following admission pursuant to 10A NCAC 13F .0801(b) and 10A NCAC 13G .0801(b) are extended an **additional forty-five (45) days** for residents who do not have an existing assessment.

For residents admitted to the facility with an existing assessment completed pursuant to 10A NCAC 13F .0801(b) or 10A NCAC 13G .0801(b), the requirement to complete an assessment of each resident within thirty days following admission pursuant to 10A NCAC 13F .0801(b) and 10A NCAC 13G .0801(b) is hereby waived. The facility shall continue to use the resident's existing assessment until an assessment is required pursuant to 10A NCAC 13F .0801(b) or 10A NCAC 13G .0801(b).

4. **Care Plan**: Deadlines for providers to ensure that a physician has authorized and certified a resident's care plan pursuant to 10A NCAC 13F .0802(e) and 10A NCAC 13G .0802(e) are extended an **additional forty-five (45) days** after the completion of the initial assessment or reassessment for residents who do not have an existing care plan.



For residents admitted to the facility with an existing care plan authorized and certified by a physician pursuant to 10A NCAC 13F .0802(e) or 10A NCAC 13G .0802(e), the requirement for providers to ensure that a physician has authorized and certified a resident's care plan pursuant to 10A NCAC 13F .0802(e) and 10A NCAC 13G .0802(e) is hereby waived. The facility shall continue to use the resident's care plan until an update to the care plan is required pursuant to 10A NCAC 13F .0802(e) or 10A NCAC 13G .0802(e).

5. **Medication Orders**: Deadlines for providers to ensure a physician has countersigned any verbal orders for medication within fifteen (15) days pursuant to 10A NCAC 13F .1002(d)(1) and 10A NCAC 13G .1002(d)(1) are extended an **additional forty-five (45) days** after the verbal order for the medication was given.
6. **Pharmaceutical Care**: Deadlines for providers to obtain the services of a licensed pharmacist, prescribing practitioner, or registered nurse for the provision of pharmaceutical care quarterly, in accordance with 10A NCAC 13F .1009(a) and 10A NCAC 13G .1009(a), are extended an **additional forty-five (45) days** from the date of the last pharmaceutical review.
7. **Licensed Health Professional Support Quarterly Reviews and Evaluations**: Deadlines for providers to assure an appropriate licensed health professional has completed the required quarterly on-site review and evaluation pursuant to 10A NCAC 13F .0903(c) and 10A NCAC 13G .0903(c) for residents requiring assistance with any of the personal care tasks delineated in 10A NCAC 13F .0903(a) and 10A NCAC 13G .0903(a) will be extended **an additional forty-five (45)** days from the date of the last quarterly review.
8. **Discharge of Residents**: If a facility experienced damage from Tropical Storm Helene to the point that the facility is unable to remain licensed and residents were evacuated, the requirements to provide a notice of discharge under 10A NCAC 13F .0702 and 10A NCAC 13G .0702 are hereby waived.

In situations where residents were evacuated from a facility in response to the threat to the health and safety of residents by Tropical Storm Helene and the facility will remain licensed, the residents have not been discharged pursuant to 10A NCAC 13F .0702 or 10A NCAC 13G .0702 and the residents have the right to return to the facility when deemed safe to do so by local officials. It is expected that all residents who have been displaced due to Tropical Storm Helene return to their home facility without delay as soon as it is safe to do so.

Activities

1. **Group Activities & Outings**: The requirements for group activities and outings for residents in 10A NCAC 13F .0905 and 10A NCAC 13G .0905 are waived. However, facilities should still attempt to ensure residents are able to engage in activities to the greatest extent possible.

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1. **Disposable Place Settings**: When it is not possible to provide a non-disposable place setting, use of disposable place settings is now permitted, superseding 10A NCAC 13F .0904(b)(1) and 10A NCAC 13G .0904(b)(1).
2. **Menus**: Menus shall be prepared and food served according to the requirements of 10A NCAC 13F .0904 and 10A NCAC 13G .0904 insofar as possible. However, should certain menu items become unavailable, or if preparation of menu items is not possible under the circumstances, facilities are permitted to serve food to meet the nutritional needs of the residents, notwithstanding the prepared menu. Therapeutic diets are still required to be served in accordance with 10A NCAC 13F .0904(e).

Special Care Units

1. **Special Care Unit Staffing**: The care coordinator for a special care unit may be counted in the staffing required under 10A NCAC 13F .1308(a), including units of 16 or more residents.
2. **Special Care Unit Resident Profile and Care Plan**: The deadline for providers to ensure that a written resident profile for special care unit residents is completed within thirty days following admission pursuant to 10A NCAC 13F .1307 is extended an **additional forty-five (45) days** for special care unit residents who do not have a written resident profile.

For special care unit residents admitted to the facility with an existing written resident profile completed pursuant to 10A NCAC 13F .1307, the requirement for providers to ensure that a written resident profile for special care unit residents is completed within thirty days following admission pursuant to 10A NCAC 13F .1307 is hereby waived. The facility shall continue to use the special care unit resident's written resident profile until an update or revision to the written resident profile is required pursuant to 10A NCAC 13F .1307.

These waivers and modifications of enforcement in this memorandum have a retroactive effective date of September 25, 2024, the effective date of Executive Order No. 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 bed capacity, the facility should submit a waiver request to the Division of Health Service Regulation. Additional waiver requests will be considered on a case-by-case basis and should be made to the Adult Care Licensure Section. Waiver requests should be submitted via email to DHSR.AdultCare.HeleneWaivers@dhhs.nc.gov.

Should you have any questions about this memorandum or need additional information, please contact Megan Lamphere, Chief of the Adult Care Licensure Section, at Megan.Lamphere@dhhs.nc.gov.

