



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: Jeff Harms, Acting Chief, DHSR Construction Section 

Megan Lamphere, Chief, DHSR Adult Care Licensure Section 

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

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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 residents.

After careful consideration and in cooperation with our adult care home providers, DHHS is accepting waiver requests for waivers or modifications for enforcement of the regulatory requirements contained in this memorandum. DHHS's intent in accepting the following waiver requests 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. Upon request, DHSR will determine if a waiver or modification of enforcement will not endanger the health, safety, or welfare of residents and visitors in North Carolina and will provide necessary relief to adult care home and family care home providers responding to the Helene State of Emergency.

Providers seeking a temporary waiver or modification of enforcement of the following rules for identified space to accommodate an increase in bed capacity must submit a written request to DHSR for approval prior to using the identified space. Requests should include a floor plan (can be a photo of the evacuation plan that is posted in the facility); the number of residents to be relocated; the location to where the residents will be relocated; a detailed narrative of how the new space will be utilized; and the name and telephone number of the primary contact person. Requests for approval of use of identified space may include requests for waivers or modifications of enforcement of the following rules:

1. Application of Physical Plant Requirements: To allow for the emergency increase of bed capacity to meet the demand for assisted living services during the Helene State of Emergency, bed capacity requirements under 10A NCAC 13F .0301(6) may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.
2. Physical Environment: Adult care homes and family care homes 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 Helene State of Emergency, the following space requirements may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency:

10A NCAC 13F .0305(b)(1)
10A NCAC 13F .0305(b)(2)
10A NCAC 13F .0305(b)(3)
10A NCAC 13F .0305(b)(4)
10A NCAC 13F .0305(c)(1)
10A NCAC 13F .0305(c)(2)
10A NCAC 13F .0305(c)(3)
10A NCAC 13F .0305(c)(4)
10A NCAC 13F .0305(d)(1)

10A NCAC 13F .0305(e)(1)
10A NCAC 13F .0305(e)(8)
10A NCAC 13F .0305(f)(1)
10A NCAC 13F .0305(f)(4)(a)
10A NCAC 13G .0305
10A NCAC 13G .0306
10A NCAC 13G .0308(d)
10A NCAC 13G .0308(f)
10A NCAC 13G .0308(h)

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10A NCAC 13F .0305(d)(5)
10A NCAC 13F .0305(d)(7)
10A NCAC 13F .0305(d)(10)

10A NCAC 13G .0309(a)
10A NCAC 13G .0309(d)

3. 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), may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.

Waivers and modifications of enforcement issued pursuant to this memorandum may have a retroactive effective date of September 25, 2024, the effective date of Executive Order No. 315, as determined by DHSR. 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.** 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 Jeff Harms, Acting Chief of the Construction Section, at Jeff.Harms@dhhs.nc.gov.

