

10A NCAC 27G .0813 WAIVER OF LICENSURE RULES

(a) The Secretary may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients residing in the facility will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients residing in the facility;
- (4) the existence of good cause; and
- (5) documentation of Local Management Entity (LME) or Local Management Entity – Managed Care Organization (LME-MCO) governing body approval when requests are from an LME or LME-MCO or contract agencies of an LME or LME-MCO or documentation of governing body approval of the facility when requests are from private facilities not contracting with an LME or LME-MCO.

(b) Requests for waivers shall be sent to the Director, Division of Health Service Regulation, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
 - (A) the reason for, and the nature and extent of, the request; and
 - (B) that the health, safety or welfare of clients will not be threatened;
- (5) documentation of LME or LME-MCO governing body approval when requests are from an LME or LME-MCO or contract agencies of an LME or LME-MCO or documentation of governing body approval of the facility when requests are from private facilities not contracting with an LME or LME-MCO.

(d) Prior to issuing a decision on the waiver request, the Director of DHSR shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DHSR and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

(f) Waivers related to physical building design and equipment shall remain in effect for 10 years.

(g) Waivers other than those identified in Paragraph (f) of this Rule shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

(h) Renewal requests pursuant to this Rule may be considered prior to the facility's application for licensure renewal being finalized when the requesting party has submitted the required application materials and fee. A waiver granted prior to licensure renewal being finalized shall be contingent upon licensure renewal being granted. A waiver granted prior to the licensure renewal shall become effective upon the date of the license renewal and is not retroactive.

(i) If a facility closes or undergoes a change of ownership, the waiver expires with the effective date of the closure or change of ownership.

(j) The decision of the Secretary regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

History Note: Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147; Eff. May 1, 1996; Amended Eff. November 1, 2012; October 1, 2007.