



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Operators of Mental Health, Developmental Disabilities, and Substance Abuse Services and Facilities

FROM: Jeff Harms, Acting Chief, DHSR Construction Section 
Robin Sulfridge, Section Chief, DHSR Mental Health Licensure Section 

DATE: October 15, 2024

RE: Requests for Temporary Waiver/Modification of Enforcement of the Construction, Design, and Physical Plant Requirements for Mental Health, Developmental Disability, and Substance Abuse Facilities Pursuant to 10A NCAC Subchapter 27G

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,

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

CONSTRUCTION SECTION

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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 § 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 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 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. 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 the mental health care 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 or a relocation of beds 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. Facility Design and Equipment: Facilities shall be designed and constructed in a manner to meet certain space requirements. To allow for the emergency use of various spaces to meet the demand for MH/DD/SA 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 27G .0304(d)(1)

10A NCAC 27G .0304(d)(2)

10A NCAC 27G .0304(d)(10)

10A NCAC 27G .0304(d)(11)

2. Specialized Community Residential Centers: In a specialized community residential center for individuals with developmental disabilities, no more than six (6) infants or children and no more than four (4) adolescents or adults may share an individual bedroom regardless of the size of the bedroom. This requirement, which is found at 10A NCAC 27G .2104, may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.

3. Before/After School and Summer Developmental Day Services for Children: Certain space requirements must be met for the classrooms and indoor and outdoor activity spaces of a facility that provides before/after school and summer developmental day services for children with or at risk for developmental delays, developmental disabilities, or atypical development. In order to meet the emergency demand for an increase in these MH/DD/SA 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 27G .2204(a)(1)	10A NCAC 27G .2204(b)(1)
10A NCAC 27G .2204(a)(5)	10A NCAC 27G .2204(b)(2)

4. Residential Recovery Programs: Certain space requirements must be met for facilities that provide residential recovery programs for individuals with substance abuse disorders and their children. In order to meet the emergency demand for an increase in these MH/DD/SA services during the Helene State of Emergency, these space requirements, which are found at 10A NCAC 27G .4104, may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.

5. Therapeutic Community: Certain space requirements must be met for therapeutic communities. In order to meet the emergency demand for an increase in these MH/DD/SA services during the Helene State of Emergency, these space requirements, which are found at 10A NCAC 27G .4306(a)(1), (b), and (c), may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.

6. Residential Therapeutic (Habilitative) Camps for Children and Adolescents: A facility that operates as a residential therapeutic (habilitative) camp for children and adolescents of all disability groups must meet certain space requirements and require certain amenities based upon the number of individuals it serves. In order to meet the emergency demand for an increase in these MH/DD/SA services during the Helene State of Emergency, these requirements, which are found at 10A NCAC 27G .5204(a), and (b), may be waived based upon requests for waivers submitted to DHSR for the duration of the State of Emergency.

Any waivers or modifications granted 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 to the Mental Health Licensure and Certification Section.

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.