



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 Section 

DATE: October 16, 2024

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

MENTAL HEALTH LICENSURE & CERTIFICATION SECTION

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

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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:** 10A NCAC 27E .0107(e) and (i) require that formal refresher training must be completed by each service provider periodically (minimum annually) and trainers shall teach a training program aimed at preventing, reducing, and eliminating the need for restrictive interventions at least once annually. The requirements are waived to allow for refresher training to be extended for an additional **one hundred eighty (180) days.**
2. **Training in Seclusion, Physical Restraint and Isolation Time-Out:** 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 requirements are waived to allow for refresher training to be extended for an additional **one hundred 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.**
2. **Competencies and Supervision of Paraprofessionals:** 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 shall be 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.

Operations of Opioid Treatment Programs (OTPs)

1. **Waiver of Rules for Unsupervised Take Home Methadone Doses:** DHSR 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.

Adult Developmental and Vocational Programs (ADVP)

1. **Scope – ADVP:** The requirement that an Adult Developmental and Vocations 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.

Substance Abuse Intensive Outpatient Program (SAIOP)

1. **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.

Substance Abuse Comprehensive Outpatient Treatment Program (SACOT)

1. **Operations – SACOT:** The requirement that a SACOT shall operate in a setting separate from the client’s residence pursuant to 10A NCAC 27G .4503 is hereby waived. For the duration of this waiver, SACOT services may be provided in a client’s residence.

These waivers and modifications of enforcement in this memorandum have a retroactive effective 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 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.