



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**
Division of Health Service Regulation

JOSH STEIN • Governor

DEVPUTTA SANGVAI • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

March 21, 2025

MEMORANDUM

TO: Nursing Home Administrators

FROM: Becky Wertz *Beverly Speroff* for Becky Wertz
Chief, Nursing Home Licensure and Certification Section

RE: EXPIRATION of Waiver/Modification of Enforcement of Nursing Home Rules, 10A NCAC Subchapter 13D

The waivers and modifications issued on October 11, 2024, pursuant to the authority granted under N.C. Gen. Stat. § 131E-112 and listed herein, will expire effective March 23, 2025.

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.

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NURSING HOME LICENSURE AND CERTIFICATION SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
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N.C. Gen. Stat. § 131E-112 gives authority to the Division of Health Service Regulation (“DHSR”) to temporarily waive any rule of the Medical Care Commission pertaining to nursing home 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 DHSR determines the existence of an emergency that poses a risk to the health or safety of residents.

The following waivers were issued on October 11, 2024:

RESIDENT ASSESSMENTS AND COLLECTION OF MDS DATA

CMS Waivers

CMS is modifying the requirements in 42 CFR § 483.20(b)(2) to provide relief to skilled nursing facilities (“SNF”) on the timeframes in which they must conduct a comprehensive assessment and collect MDS data. CMS is not waiving the requirements for facilities to conduct the assessment and collect MDS data at 42 CFR 483.20(b)(1).

10A NCAC 13D Provisions Regarding Assessments Are Not Waived.

1. Rule 10A NCAC 13D .2301(a) & (b), Patient Assessment and Plan of Care, requires that a facility perform, within 24 hours of admission, a nursing assessment of a patient’s immediate needs and, within 14 days of admission, a comprehensive assessment of each patient’s capability to perform daily life functions. Enforcement of 10A NCAC 13D .2301(a) is not waived. Enforcement of 10A NCAC 13D .2301(b) is modified to provide relief to nursing homes on the timeframes in which they must conduct a comprehensive assessment.

PHYSICIAN VISITS

CMS Waivers

CMS is waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.

10A NCAC 13D Waivers

1. Rule 10A NCAC 13D .2501(b) and (c), Availability of Physician’s Services, requires that patients be seen by a physician at least once every 30 days for the first 90 days and at least every 60 days thereafter, a physician review the patient’s care plan at each visit, and a physician sign and date all current orders at each visit. Physician visits, reviews of care plans, and completion of orders required in 10A NCAC 13D .2501(b) and (c) may be conducted via telehealth options, as appropriate, consistent with the CMS waiver of § 483.30. However, to the extent possible, facilities should make all practicable and reasonable efforts to continue in-person physician and non-physician practitioner visits for facility patients.

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PHYSICAL ENVIRONMENT AND CAPACITY

CMS Waivers

CMS is waiving requirements under 42 CFR 483.90 to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity. Rooms that may be used for this purpose include activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met. This can be done so long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department.

10A NCAC 13D Waivers Applicable to Providers Who Submit and Receive Approval of Individual Waiver Requests

When an individual facility's Request for Waiver allowing for a Temporary Increase in Licensed Bed Capacity or relocation of beds is submitted to and approved by DHSR, the following may apply:

1. Rule 10A NCAC 13D .2001(13), Definition of Existing Facility, defines an existing facility, and Rule 10A NCAC 13D .3102, Application of Physical Requirements, states that the rules contained in Sections .3100 through .3400 of Subchapter 13D constitute minimum requirements for a facility building. Enforcement of 10A NCAC 13D .2001(13) and 10A NCAC 13D .3102 is modified to allow a facility to submit requests for DHSR approval of use of identified space in response to the Helene State of Emergency.
2. Rule 10A NCAC 13D .2102(c), Issuance of a License - Bed Capacity, provides that a license issued to operate a facility identifies the bed capacity and services provided in the facility. Enforcement of 10A NCAC 13D .2102(c) is waived to allow a facility to have a license that does not reflect the bed capacity only if a temporary increase in licensed bed capacity has been approved in writing by DHSR in accordance with 10A NCAC 13D .2105(c).
3. Rule 10A NCAC 13D .2104(b)(3) & (4), Requirements for Licensure Renewal or Changes, requires a facility to notify the Nursing Home Licensure and Certification Section in writing and make changes to the application at least 30 days prior to a change in licensed bed capacity or a change in location of the facility. Enforcement of 10A NCAC 13D .2104(b)(3) and (4) is modified to allow the facility to change licensed bed capacity immediately after written approval from DHSR.
4. Rule 10A NCAC 13D .2105(b) & (c), Temporary Change in Bed Capacity, permits a facility to exceed its licensed capacity as determined by its disaster plan and as authorized by DHSR. Emergency authorizations by DHSR shall not exceed 60 days, and DHSR must authorize a temporary increase in licensed beds in writing. Rules 10A NCAC 13D .2105(b) & (c) are not waived. An emergency authorization issued to a facility pursuant to 10A NCAC .2105(c) may be revoked if DHSR determines that the temporary increase in capacity is associated with a capital expenditure or jeopardizes the health, safety, or welfare of patients/residents. An emergency authorization issued to a facility pursuant to 10A NCAC .2105(c) may remain in effect for the period of consecutive days specified in the approval of DHSR, unless terminated by DHSR in its sole discretion, or until seven (7) days after expiration of the State of Emergency declared by Executive Order 315 issued on September 25, 2024.

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The October 11, 2024, Memorandum stated that the waivers therein would remain in effect until rescinded by DHSR. The Public Health Emergency related to Hurricane Helene is scheduled to expire effective March 23, 2025. Consequently, the waivers listed herein will also expire effective March 23, 2025.

Should you have any questions about this memorandum or need additional information, please contact Becky Wertz, Chief of the Nursing Home Licensure and Certification Section, at Becky.Wertz@dhhs.nc.gov.

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