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: Mark Payne

DATE: August 8, 2022

RE: Requests for Temporary Waivers or Modifications 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 pursuant to the authority granted in the 2022 Appropriations Act

On March 12, 2020 and June 10, 2020 memorandums were issued by the North Carolina Department of Health and Human Services (DHHS), Division of Health Service Regulation (DHSR) that waived or modified specific legal or regulatory constraints that would prevent or impair certain DHSR regulated health care services during the North Carolina State of Emergency declared in Executive Order 116.

The March 12, 2020 memorandum and waivers were issued at the request of the North Carolina Emergency Management Director, Mike Sprayberry, pursuant to N.C. Gen Stat. § 131E-84 and Executive Order 116. The authority for the June 10, 2020 (also cited as additional authority for the March 12, 2020 memorandum) waivers and modifications was granted by the Governor, with the concurrence of the Council of State, in Section 1 of Executive Order 130 and Section 2 of Executive Order 139 (extended by Executive Order Nos. 144, 148, 152, 165, 177, 193, 211, 225, 236, 245 and 256). Additionally, Section 1 of Executive Order 130 delegated authority to DHHS to waive or modify enforcement of any legal or regulatory constraints that would prevent or impair increasing health care facilities' licensed bed capacity.

Pursuant to Section 1 of Executive Order 148, these waivers remain in effect for thirty (30) days following termination of the Executive Orders extending the authority for the waivers. Executive Order 256 was not extended and expired on July 15, 2022; therefore, the waivers and modifications issued on June 10, 2020 and waivers and modifications approved pursuant to the memorandum will expire on August 14, 2022.

On July 7, 2022, North Carolina Session Law 2022-74 (the 2022 Appropriations Act), was enacted and included legislation for emergency flexibilities for certain facilities and services regulated by DHSR. Section 9E.2.(a) added to language to North Carolina General Statute § 122C-27.5, that granted authority to DHSR to temporarily waive any rules adopted to implement Article 2 of Chapter 122C pertaining to facilities licensed pursuant to Chapter 122C during a declaration of a public health emergency by the Secretary.

Pursuant to the authority vested in the United States Secretary of Health and Human Services (Secretary) under Section 319 of the Public Health Service Act, determined that a public health emergency exists as a result of the consequences of the Coronavirus Disease 2019 (COVID-19 Public Health Emergency) since January 27, 2020. Former Secretary Azar previously renewed the determination that a public health emergency exists and has existed since January 27, 2020 nationwide on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021 and Secretary Becerra renewed the determination on April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, and July 15, 2022.

In response to the COVID-19 Public Health Emergency and after careful consideration, DHSR is waiving or modifying enforcement of the regulatory requirements contained in this memorandum upon approval of requested submitted to DHSR. DHSR's intent in issuing the following waivers is to protect the health, safety, and welfare of residents and visitors located in North Carolina and provide necessary relief to Mental Health, Developmental Disability, and Substance Abuse Facilities regulated under 10A NCAC Subchapter 27G in responding to the COVID-19 pandemic and to allow for more efficient treatment of patients.

Request for waivers made pursuant to the March 12, 2020 memorandum that were approved by DHSR will remain in effect pursuant to the authority granted in the 2022 Appropriations Act and will expire at the end of the COVID-19 Public Health Emergency or at such time as DHSR determines that an emergency no longer exist or at any time. Additionally, DHSR will continue to accept requests for waivers as outlined in the March 12, 2020 memorandum.

The following waivers issued pursuant to the 2022 Appropriations Act will expire at the end of the COVID-19 Public Health Emergency or at such time as DHSR determines that an emergency no longer exist or at any time as determined by DHSR:

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 COVID-19 pandemic, the following space requirements are hereby waived to allow for requests for waivers to be submitted to DHSR:

10A NCAC 27G .0304(d)(1)	10A NCAC 27G .0304(d)(10)
10A NCAC 27G .0304(d)(2)	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, is hereby waived to allow for requests for waivers to be submitted to DHSR.

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 COVID-19 pandemic, the following space requirements are hereby waived to allow for requests for waivers to be submitted to DHSR:

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 COVID-19 pandemic, these space requirements, which are found at 10A NCAC 27G .4104, are hereby waived to allow for requests for waivers to be submitted to DHSR.

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 COVID-19 pandemic, these space requirements, which are found at 10A NCAC 27G .4306(a)(1), (b), and (c), are hereby waived to allow for requests for waivers to be submitted to DHSR.

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 COVID-19 pandemic, these requirements, which are found at 10A NCAC 27G .5204(a)(1), and (b), are hereby waived to allow for requests for waivers to be submitted to DHSR.

Should you have any questions about this memorandum or need additional information, please contact Jeff Harms, Acting Section Chief of the Construction Section.

cc: Julie Cronin
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