



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

August 10, 2022

TO: Nursing Home Administrators

FROM: Jana Busick, Chief, Health Care Personnel Education and Credentialing Section

SUBJECT: Update to Waiver/Modification of Enforcement of the Training and Certification of Nurse Aides Based Upon the 2022 Appropriations Act

On April 27, 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 April 27, 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-112 and Executive Order 116. 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) granted by the Governor, with the concurrence of the Council of State were additionally additional authority for the waivers and modifications in the memorandums.

On June 10, 2020, pursuant to the authority in the Executive Orders, DHSR issued a memorandum supplementing the April 27, 2020 memorandum. Pursuant to Section 1 of Executive Order 148, the waivers and modifications in the memorandums 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 April 27, 2020 and June 10, 2020, based on the authority above, will expire on August 14, 2022.

On April 29, 2022 and May 3, 2022, DHSR issued memorandums with expirations of state waiver rules to maintain consistency with the expiration of several CMS waivers. The updates and expiration of waivers/modifications in the April 29, 2022 and May 3, 2022 memorandums remain except as amended below.

On July 7, 2022, North Carolina Session Law 2022-74 (the 2022 Appropriations Act), was enacted and included legislation for the hiring of health care personnel by nursing facilities to perform nurse aide duties. Section 9E.1.a) added language to N.C. Gen. Stat. § 131E-255, stating:

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

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(f) Notwithstanding the provisions of this section or any other provision of law, a nursing facility may employ or contract with health care personnel who are not listed on the Nurse Aide Registry to perform the duties of a nurse aide for a period of up to four months, consistent with subsection (d) of 42 C.F.R. § 483.35. As used in this subsection, "health care personnel" means unlicensed staff that have direct access to residents, clients, or their property. Direct access includes any unlicensed staff that, during the course of employment, have the opportunity for direct contact with an individual or an individual's property when that individual is a resident, client, or person to whom the nursing facility provides services.

See N.C. Gen. Stat. § 131E-255(f)

TRAINING AND CERTIFICATION OF NURSE AIDES

The following rule waivers for nurse aide services will expire on August 14, 2022; however, nurse aides may be employed for up to 4 months without being listed on the Nurse Aide I Registry pursuant to the new statutory language in N.C. Gen. Stat. § 131E-255:

10A NCAC 13D Waiver Expiration and Modification

1. Rule 10A NCAC 13D .2001(23), Definitions, defines a Nurse Aide as a person listed on the N.C. Nurse Aide Registry and provides nursing or nursing-related services in a nursing home. For consistency with the CMS expiration of waiver, a nurse aide may no longer be employed for an unlimited time without meeting the training and certification requirements under 42 CFR § 483.35(d). Enforcement of the portion of 10A NCAC 13D .2001(23) requiring a Nurse Aide to be listed on the N.C. Nurse Aide Registry is waived for up to 4 months of employment of a Nurse Aide in a nursing home, consistent with 42 CFR § 483.35(d), so long as the facility can verify the nurse aide is competent to provide nursing and nursing related services. A Nurse Aide must be listed on the N.C. Nurse Aide Registry within 4 months of employment to continue providing nursing or nursing-related services in the nursing home. **This rule waiver and modification expires August 14, 2022.**
2. Rule 10A NCAC 13D .2304(a), Nurse Aides, requires a facility to employ or contract individuals as Nurse Aides that have met the training requirements in compliance with N.C. General Statute 131E, Article 15 and for facilities certified for Medicare or Medicaid participation in compliance with 42 CFR Part 483.35(d). For consistency with the CMS expiration of waiver, a Nurse Aide may no longer be employed for an unlimited time without meeting the training and certification requirements under 42 CFR § 483.35(d). Enforcement of the portion of 10A NCAC 13D .2304(a) requiring a Nurse Aide to be listed on the N.C. Nurse Aide Registry is waived for up to 4 months of employment of a Nurse Aide in a nursing home, consistent with 42 CFR § 483.35(d), so long as the facility can verify the nurse aide is competent to provide nursing and nursing related services. A Nurse Aide must be listed on the N.C. Nurse Aide Registry within 4 months of

employment to continue providing nursing or nursing-related services in the nursing home. **This rule waiver and modification expires August 14, 2022.**

Pursuit to N.C. General Statute § 131E-255, nursing homes may employ an individual who is not a Nurse Aide I to perform resident care, not to exceed 4 months from date of hire, in order to assist the person in successfully completing a North Carolina state-approved Nurse Aide I training and competency examination program. A Nurse Aide I must be listed on the N.C. Nurse Aide I Registry within 4 months of employment to continue providing nursing or nursing-related services in the nursing home. The nursing home is required to deem the individual competent, by a Registered Nurse employed by the facility, prior to provide nursing or nursing related services to residents during this period. Additional requirements apply to nursing homes that must be adhered to in 42 CFR § 483.35.

Additionally, as stated in the April 29, 2022 memorandum, during this transition period for nursing home providers, DHSR will continue to accept the Temporary Nurse Aide I Training Equivalency Application Due to COVID-19, pursuant to the April 26, 2021 DHSR Memorandum, through October 7, 2022. This will allow Temporary Nurse Aides hired on or before June 6, 2022, to complete nurse aide training at a nursing home facility. Nursing homes must continue to verify the nurse aide is competent to provide nursing and nursing related services during this period.

Individuals who submit the Temporary Nurse Aide I Training Equivalency Application Due to COVID-19 and receive approval by DHSR, must pass the North Carolina State-Approved Nurse Aide I Competency Examination within two (2) years from the date of application approval by DHSR or within three (3) attempts, whichever comes first, to be placed on the North Carolina Nurse Aide I Registry, unless training and certification requirements referenced in 42 CFR §483.35(d) are applicable.

Should you have any questions about this memorandum or need additional information, please contact Becky Wertz, Section Chief of Nursing Home Licensure and Certification Section or Jana Busick, Section Chief of Health Care Personnel Education and Credentialing Section.

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