



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Nursing Home Administrators

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

DATE: April 29, 2022

RE: Update to Waiver/Modification of Enforcement of Temporary Nurse Aide Services 10A NCAC Subchapter 13D

On March 1, 2020, in response to the COVID-19 Public Health Emergency, pursuant to the Secretary's Authority in section 1135 of the Social Security Act, the Center for Medicare & Medicaid Services (CMS), enacted several temporary emergency blanket waivers that extended flexibilities required to respond the COVID pandemic. On April 27, 2020, June 10, 2020, and April 26, 2021, at the direction of the Office of Emergency Management and pursuant to the authority delegated in Executive Orders 116 and pursuant to the authority delegated in 139 (extended by Executive Order Nos. 144, 148, 152, 165, 177, 193, 211, 225, 236, and 245), the Department of Health and Human Services, Division of Health Service Regulation (DHSR) also issued temporary emergency blanket waivers. DHSR waivers made for consistency with the CMS waivers received a retroactive effective date of March 1, 2020.

On April 7, 2022, CMS issued a [Memorandum](#) of Update to COVID-19 Emergency Declaration Blanket Waiver for Specific Providers (QSO-22-15-NH & NLTC & LSC). CMS identified minimum regulatory requirements to protect resident health and safety but do not relate to infection control. DHSR will also restore enforcement of the minimum regulatory requirements in-line with CMS. The following blanket waivers and modifications of enforcement of legal constraints will expire 60 days from publication of the CMS Memorandum consistent with expiration of the following CMS waiver:

CMS Waiver Expiration

The CMS waiver of the requirements at 42 CFR § 483.35(d), (except for 42 CFR § 483.35(d)(1)(i)), which require that a SNF and NF may not employ anyone full time for longer than four months, unless they met the training and certification requirements under 42 CFR § 483.35(d) will expire 60 days from the date of the CMS Memorandum. The following DHSR waivers will expire and be modified to align with the expiration of the CMS waiver of 42 CFR § 483.35(d):

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 §

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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.

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.

The modifications in this memorandum are effective until 5:00 p.m. EST on July 15, 2022, or until a subsequent Executive Order is issued, which rescinds the Declaration of the State of Emergency or a subsequent Executive Order is issued which extends the duration of Section 2 of Executive Order 139.

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 27, 2020 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.

cc: Lisa Corbett
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